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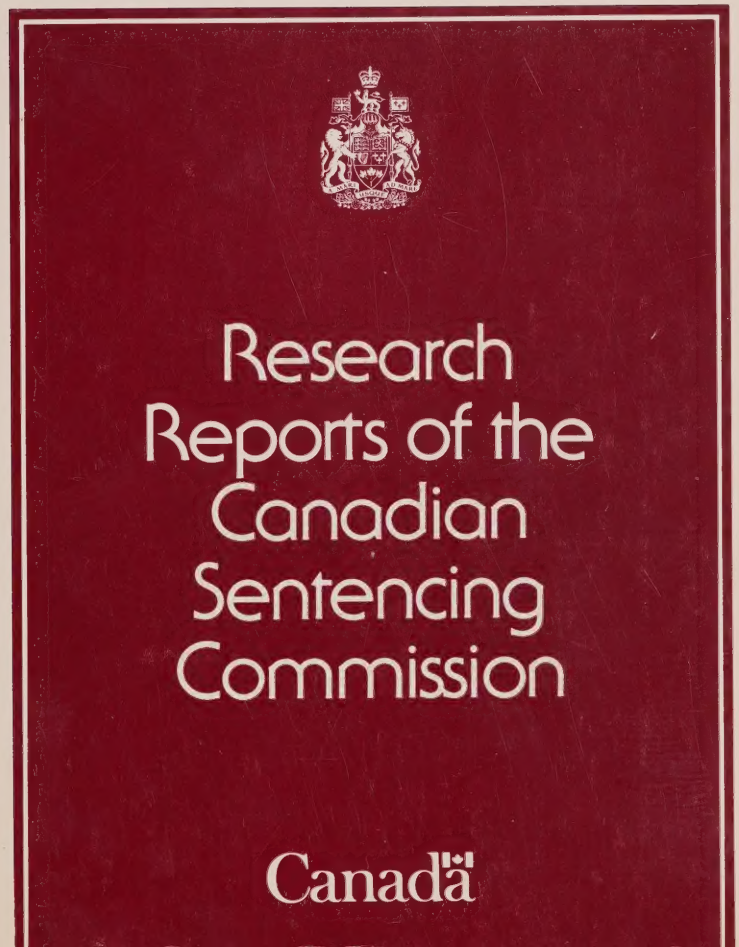
JUSTICE IN SENTENCING: OFFENDER PERCEPTIONS

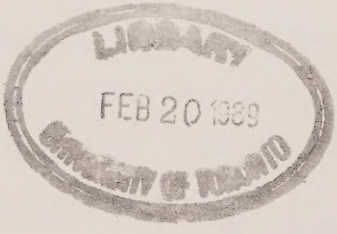


Research and Development Directorate
Policy, Programs and Research Branch

Direction générale de la recherche et du développement
Direction de la politique, des programmes et de la recherche

JUSTICE IN SENTENCING: OFFENDER PERCEPTIONS

John Ekstedt and Margaret Jackson
Simon Fraser University
1988



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Published by authority of the Minister of Justice and Attorney General of Canada

For additional copies, please write or call
Communications and Public Affairs
Department of Justice Canada
Ottawa, Ontario
K1A 0H8

(613) 957-4222

Catalogue No. J23-3/6-1988E
ISBN 0-662-15868-7
ISSN 0836-1797

Également disponible en français

Printed in Canada

JUS-P-439

ACKNOWLEDGEMENTS

First mention goes to those sentenced persons who participated in this study. Obviously they deserve acknowledgement since, without them, there would have been no study. However, they deserve recognition on more complete grounds than that. It is difficult, particularly in settings of confinement, for sentenced persons to imagine that there is any value in "academic" exercises and particularly ones which hold out the promise that their views will be taken seriously. Coupled with that, of course, are the negative nuances arising from events in confinement, or in the program, which are unrelated to the research and which often result in a resistance or inability to participate "freely".

The impact of events and uncertainties of this nature are illustrated in the field notes which make up part of this research report. In the face of this, a large number of sentenced persons in British Columbia participated enthusiastically in this study. Their involvement is acknowledged with respect and thanks.

A large number of persons with administrative and managerial responsibility for both federal and provincial corrections assisted the research team. Some "eased the way" in obtaining access to correctional institutions and programs, others took the time to review our research strategy and instruments. The following are especially acknowledged:

Mr. Rheal LeBlanc, Commissioner of Corrections, Canada
Mr. Bernard Robinson, Commissioner of Corrections, British Columbia
Mr. James Murphy, Regional Director General, Pacific Region, Corrections Service of Canada
Mr. Ron Wiebe, Research Director, Pacific Region, Corrections Service of Canada
Ms. Betty-Lou Edwards, National Parole Service, Pacific Region Corrections Service of Canada
Mr. John Konrad, Chairman, B.C. Parole Board
Mr. Michael Redding, Exec. Dir., B.C. Parole Board
Mr. Ted Harrison, Regional Director, Vancouver Region, B.C. Corrections Branch
Mr. Robert Hagman, Director, Vancouver Pre-Trial Services Centre
Ms. Charlene Howe, Creative Community Service Program

Additionally, the administrators and participating staff in each correctional setting sampled are acknowledged with thanks. Many correctional staff persons assisted in this research both directly and indirectly. Some went out of their way to help assure the success of this research effort. It is wished that all these persons could be known and individually recognized.

Finally, a note of thanks to Aileen Sams of the School of Criminology for her extraordinary effort in assisting the research team to pull all this together.

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SENTENCING STUDY - OFFENDER SURVEY

I. INTRODUCTION

In the Order in Council setting out terms of reference for The Canadian Sentencing Commission, the general areas of interest to be examined were briefly stated as follows:

1. An examination of the feasibility of minimum/maximum sentences developed relative to the seriousness of the offence;
2. A consideration of the efficacy of sentencing guidelines;
3. A discussion of the impact plea negotiation and prosecutorial discretion has upon the sentencing process, as well as;
4. The effect parole, mandatory supervision, and general remission revisions have on existing penal and correctional capacities; and finally,
5. A determination of what the fundamental principles and purposes of sentencing are perceived to be in light of recent legislation (Bill C-19) setting out these ideals.

It is of interest to note that the current mandate of the Sentencing Commission is not one of contemporary concern only; it reflects concerns which date back through many other commissions. Fair, equitable, and just sentencing appears to

have been a remarkably well-examined issue for Canadian legislators and criminal justice system administrators. Discussion about sentence disparity has been the form most often taken. For example, the Ouimet Report (1969) addressed the topic in this manner:

> ...offenders who are sentenced by different judges and magistrates to different terms of imprisonment for what they may consider similar offences, are likely to meet eventually at a common place of detention. They will inevitably compare the kind of penalties imposed by judges for what they, within the prison sub-culture, consider to be identical crimes. A deep sense of injustice may then arise in their minds, because they may not be capable of appreciating the very real differences between the commission of one offence which is comparable to another. Therefore, they will normally feel aggrieved by such apparent inequalities or inequities and their rehabilitation may present additional difficulties.

Imbedded within this statement are three assumptions which the present study will attempt to probe. First, that the perception of the inmate/offender in the process is important. The appearance of justice being done remains significant not only for the general public, but for those of the public who are processed by the system. Next, sentencing disparities do exist. There is empirical evidence to back this assumption, and not all attribute disparities to "justifiable" reasons. Whether the disparities result from prosecutorial negotiation, prosecutorial or judicial discretion, or such factors as race, sex, and the socio-economic level of the offender, they are often perceived to be unfair by the offenders themselves. The third point, then, is that the experience of unfairness will affect the individual's rehabilitation; the assumption being that this is

one of the goals of sentencing. Of course, at present, section 645 of the Criminal Law Reform Act clearly states:

> ...a term of imprisonment should not be imposed or its duration determined solely for the purpose of rehabilitation (645)(1)(g).

Nevertheless, concern about the offender's perception of fairness can now be legitimized as serving the needs of (645)(1)(a):

> ...promoting respect for the law through the imposition of just sentences.

Therefore, the present study was undertaken for the purpose of investigating sentencing issues within the Commission's mandate. In order to gain some knowledge of the offender's attitudinal reactions to questions posed about sentencing practices within an individualized as well as a social context, both a structured questionnaire and a group interview schedule were developed. In an attempt to sample a wide-range of offenders in the Lower Mainland, individuals from various stages and types of facilities in corrections served as participants. Details will be provided in the next section on methodology.

The focus of the study will be upon the perceptions of the offenders themselves, the individuals most intimately involved in the sentencing process. It is not even currently known, for example, what offenders view as the goals of sentencing. A series of such questions emerge from the terms of reference which can be directed toward the offender. To what extent do the offenders perceive disparities in dispositions handed down by sentencing judges? Do female offenders feel they should receive

the same treatment in sentencing as males? Are sentences thought to be fair and equitable? Would offenders prefer mandatory supervision over parole or vice versa? Is there a difference between federal and provincial offender attitudes towards sentencing? Ironically, these provoking questions have not often been asked of the offender, but have been directed towards other actors in the process, judges for example. This study will allow some comparison with earlier research asking many of these questions of the primary decision-makers in the process. Perhaps judges have something to learn from those they sentence.

Finally, some questions will allow a comparison with a sentencing study done by the Australian Law Reform Commission in 1980, which also surveyed offenders. It will be of interest to see if the concerns of offenders translate similarly across countries.

II. RESEARCH METHODOLOGY

Objectives of the Study

The object was to survey as broad a spectrum of offenders in the Lower Mainland as possible, regarding their perception of sentencing practices. Seven areas were identified within the Commission's mandate which were subjected to enquiries through a questionnaire and group interviews:

1. Purposes and principles of sentencing: why do we sentence offenders?
2. Where is disparity most evident in sentencing practice? For this variable, socio-economic, geographical, judicial, racial, and sexual disparity, questions were posed;
3. Post-sentencing issues, including mandatory supervision, tariff sentencing, and preferences related to parole and mandatory supervison;
4. The need for sentencing guidelines for structured discretion;
5. Extra-legal factors in sentencing: what mitigates or aggravates sentence severity?;
6. The offence-sentence relationship, or "just deserts" model; and,

7. The importance of various actors within the sentencing process.

In order to collect opinions on the issues outlined above, two different methodologies were employed which seemed suited to the nature of the task: a questionnaire to furnish us with a "hard copy" of the responses to selected issues to produce empirical data capable of statistical analysis, and an informal group discussion around the specific topics which allowed for comparison as well as a form of internal reliability and external validity check of the questionnaire itself.

A structured questionnaire was developed with items created for each of the above areas, resulting in a total of 80, with 10 demographic questions also posed. The breakdown of specific questions to issue is given in Appendix A. After an examination and subsequent comments were made by the Sentencing Commission, a pretest was administered at the Vancouver Pretrial Services Centre (VPSC) on June 26, 1985. Following further revision, access and scheduling at the institutions began.

Initially, it was planned to draw random samples from the offender population and this was done for the majority of the institutions and facilities, but difficulties were encountered with a few. Some of these problems are detailed in the following footnote.[1]

---

[1] 1) Despite the fact the prisoners are confined, they are often very difficult to locate. Some are in court, have been released on day parole and temporary absences, are serving time in segregation for disciplinary offences, are in "protective custody" and cannot mix with the general population, are in the prison's medical unit, or were not allowed to attend because

It was decided, therefore, to record the opinion of as many offenders as possible while adhering to the random sampling procedure where feasible.

However, it should be noted that opinions sampled should not be generalized beyond those institutions surveyed. Also, although strict random sampling could not be employed for all groups, inferential tests were still used to compliment the descriptive analysis (frequencies/means) in order to indicate general trends and associations, but no causal inferences are intended. Non-parametric tests were employed, primarily the Mann-Whitney and Kruskal-Wallis tests. These statistical procedures were applied through the Statistical Package for the Social Sciences (SPSSX).

Three research teams of male/female pairs attended the prison or community program where they spoke to offenders. They introduced themselves as researchers "on contract" for the Canadian Sentencing Commission and outlined the goals of the

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[1](cont'd) they were considered a security risk.
2) It was not always possible to ask inmates if they wanted to participate in the study. Frequently this was done by prison staff or other prisoners, therefore it is not possible to know how well the objectives of the study were communicated.
3) When a forum for presentation of the research plan was secured, many prisoners were simply not interested in being involved. This was especially the case with offenders under supervison in the community. "Captive audiences" were generally more receptive.
4) The prison administrations dealt with usually referred the researchers to inmate groups, or programs, that they felt would be open to the study's queries. Inevitably, this leads to bias. Many of the respondents were used to discussing sensitive topics and contributed richly during the open discussion. Others were silent during the open forums, but were able to record their opinions on the questionnaire.

project. Those who did not wish to participate were allowed to withdraw. Each participant was given the questionnaire with 80 items and 10 demographic questions which took about 20 to 25 minutes to complete. Afterwards, the researchers directed an open discussion that lasted from one to almost two hours concerning sentencing issues raised in the questionnaire. If time permitted, the groups were asked if they had any comments that they would like the Commission to consider beyond the research team's concerns. One member of the research team directed the discussion while the other recorded responses.

Participants and Locations

In the study, offenders from 12 distinct institutions or community programs participated, allowing for the collection of 165 questionnaires. One hundred and fifty-seven respondents participated in the interviews. The institutions and programs are identified as follows.

Provincial

Lower Mainland Correctional Centre (Oakalla), Vancouver - this institution is the major provincial correctional centre for British Columbia. It houses male prisoners on remand status and those serving provincial sentence. Designated capacity - 399 beds.

Lakeside Correctional Centre - Lakeside houses women remanded in custody and serving federal and provincial terms of incarceration. Designated capacity - 65 beds.

Vancouver Island Regional Correctional Centre - this institution houses male prisoners on both remand and sentence status. Designated capacity - 150 beds.

Allouette River Unit - this is a minimum security provincial facility providing an overall rehabilitation program for male offenders. Designated capacity - 119 beds.

Federal

Matsqui Institution - this is a medium security federal prison for male offenders. Designated capacity - 335 beds.

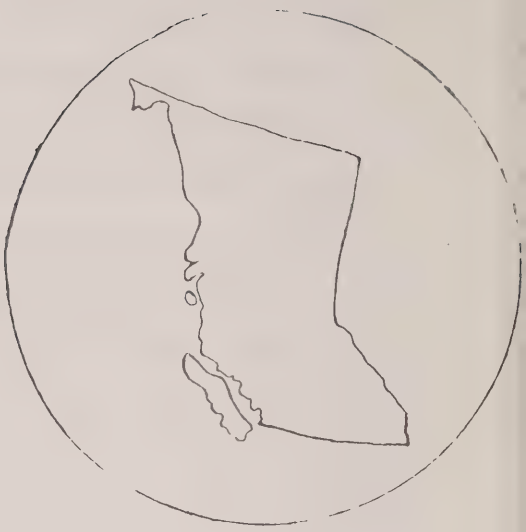
Kent Institution - this is a maximum security federal prison for male offenders. Designated capacity - 168 beds.

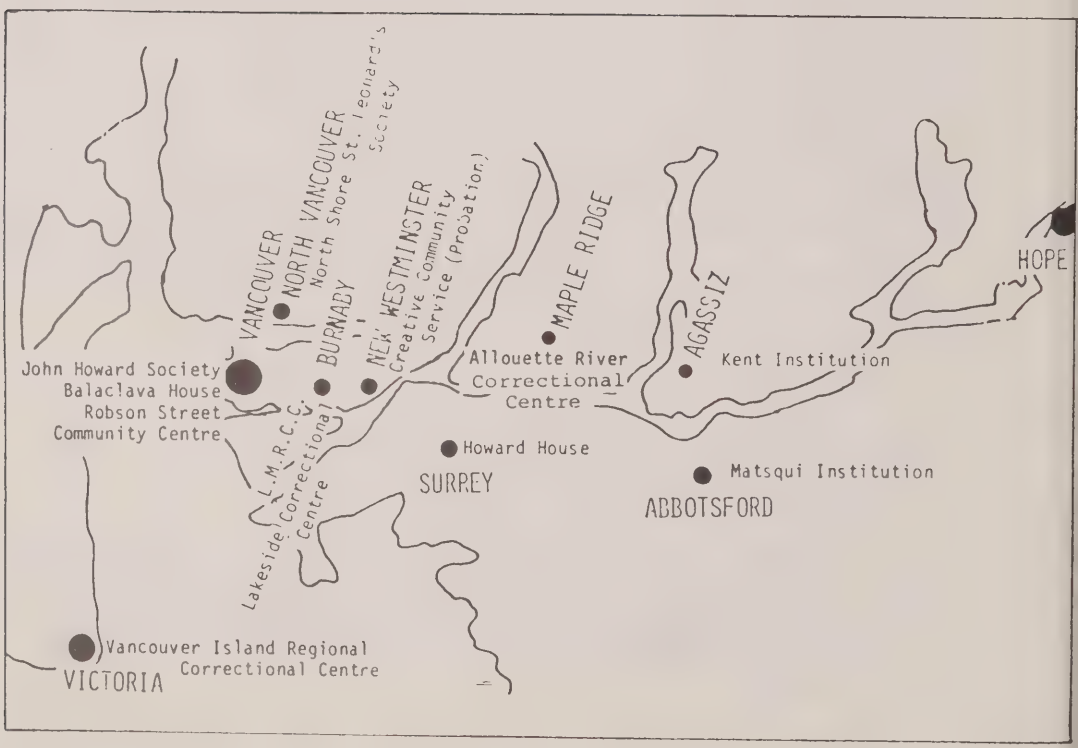
Robson Street Community Correctional Centre - this is a residence for day parolees serving federal sentences. Designated capacity - 119 beds.

Private Agency Programs

Balaclava House - this is a half-way house program for women operated by the Elizabeth Fry Society. Designated capacity - 12 women.

LOCATION OF INSTITUTIONS AND PROGRAMS SURVEYED





Howard House - this is a half-way house run by the John Howard Society for federal offenders (male) released on parole or mandatory supervision. Designated capacity - 10 men.

John Howard Society, Sexual Offender Program - this is a mandatory counselling program for sex offenders released on mandatory supervision.

St. Leonard's Society - this is a federally funded half-way house program for male offenders released on day parole or mandatory supervision. Designated capacity - 7 men.

Creative Community Services, New Westminster - this is a private agency program operating under contract with the Provincial Government to supervise probationers receiving community work orders.

The groups spoken to included:

1. Provincial offenders (N=63) serving sentences in custody or awaiting trial, both male and female;
2. Provincial offenders on probation (N=10);
3. Federal offenders (N=63) incarcerated at S-3 to S-6 security levels, both male and female; and
4. Federal offenders on day parole (N=19) and mandatory supervision (N=10) both male and female.

Some of the sub-groups included prisoners from a compulsory alcohol-awareness program, sexual offenders in a mandatory therapeutic counselling session, women in a half-way house and members from a "lifer's organization". The breakdown is represented graphically in detail in Figure 1 and frequencies

given in Table 1.

After a preliminary description of the sample demographics, the results will be reported according to the seven topic breakdown. Within each of these, the questionnaire findings will be reported first, with additional statistics given where of interest; then the relevant interview responses will be considered. The format will include differences between groups such as federal/provincial, female/male, recidivist/first offender, parolee/non-parolee comparisons.

In the conclusions, the findings will be highlighted and interpreted.

Table 1

Locations and Frequencies of Offenders Surveyed

Institution or Program	N=	% of Sample
PROVINCIAL		
LMRCC, Main Jail	9	5.6
LMRCC, Westgate "B"	9	5.6
Allouette River Unit	12	7.5
Lakeside Correctional Facility*	20	12.5
VIRCC	23	14.4
Probationers	10	6.3
FEDERAL		
Kent Maximum Security	20	14.9
Matsqui Institution	34	21.2
Robson Centre Community Correctional Centre	6	3.7
Howard House	4	2.5
North Shore St. Leonard's Society	3	1.8
Balaclava House	5	3.1
Sexual Offenders	10	6.3
Total	165	100%

* Lakeside Correctional Centre contains women serving both federal and provincial prison terms.

Number of Provincial and Federal Persons Sampled at Each Location

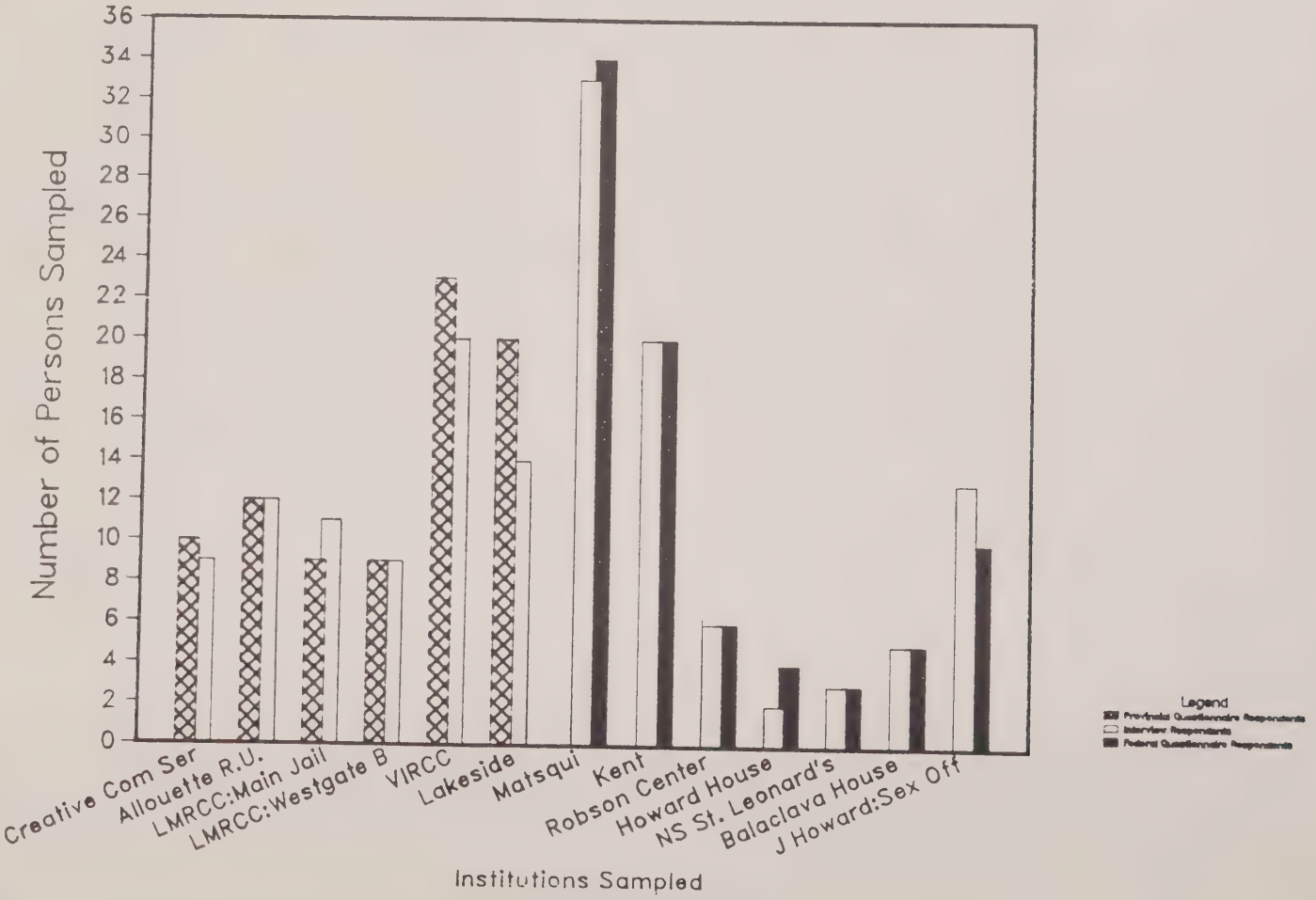


Figure 1

III. RESULTS AND DISCUSSION

A. Questionnaire - Summary Responses

Demographics

Comparing the demographic results with other statistical data[2] it is found that in terms of age and aggregate sentence, the provincial offenders sampled were comparable to the average for British Columbia. A profile of the "typical" offender in the present study is indicated in Table 2.

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[2]Personal communication, Gregory Muirhead, Senior Research Officer, B.C. Corrections Branch, Victoria, B.C.

Table 2

Offender Profile

Age	= mean 31 years
Current Offence	= robbery, murder, break and enter (most frequent)
Previous Offences	= break and enter, drugs, impaired driving

Level of Education	N	%
Less than Grade X	37	22
Less than Grade XII	29	18
High School Graduate	38	23
Some Post Secondary	44	27
Post Secondary Graduate	13	8
No Reponse	4	2
TOTAL	165	100

First Offender	= only 24%, 76% recidivists
On Parole	= 38% have been, 62% have not
Applied for Parole	= 59% have, 42% have not
Total Sentence Length	= majority under two years (37%)
Sex*	= 16% (25) Female, 84% (130) Male

*Excluding probation

Purposes and Principles of Sentencing

It is appropriate to begin a discussion of the results with reference to the responses made to items enquiring into the purposes and principles of sentencing. The goal of rehabilitation has now officially been discarded (see Criminal Law Reform Act 1984, section 645), by those legislating sentence reform. But what of the perception of the offender? If she/he strongly believes that one of the outcomes of his/her sanctioning experience is rehabilitation, then failure to achieve this goal may lead to an increased bitterness and a true "hardening of the criminal".

The overall findings indicate there is no such illusion in the offender's mind. Of the six goals provided for consideration to the question,

Why Offenders are Sentenced?

"Punish the Offender" received an overwhelming 78% agreeing or strongly agreeing[3] that this was the primary goal; protection of the public emerged as a second strongest response recorded with 69% agreeing or strongly agreeing.

There were no significant differences between groups on this issue, with the exception of the first offender/recidivist comparison. Here, in response to the proposed goal of sentence

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[3]The categories of responses were five: strongly disagree, disagree, neutral (or no opinion), agree, or strongly agree.

"paying the victim back for the harm done", 40% of the first offenders and 24% of the recidivists agreed. Therefore, first offenders, as a group, were more inclined to view sentencing as a means by which victims can be compensated. This may be because first offenders are more likely to receive sentences of community work service and restitution-like dispositions than recidivists. The latter group is more likely to be sentenced for public protection than punishment reasons.

Responses to two other items relating to sentencing functions revealed, first, that offenders think

> Individuals should only be sent to prison if they cannot learn from less severe sentences (such as fines, suspended sentences, probation)

with 65% agreeing or strongly agreeing with the statement. This is interesting in light of their stated belief that the primary purpose of sentencing is to punish. This seems to imply that there is a cognitive purpose of a lesson to be learned that is operational for them as well. Second, in response to the question as to whether judges should explain why they sentenced the way they did, 89% agreed or strongly agreed that they should. The judge should articulate what function is being served, whether deterrence, reformation, or other. Perhaps this clarifies for the offender what objective he or she should be keeping in mind while serving the sentence.

No inferential statistics were done for this section. Because of the high agreement, cross-tabs did not reveal any significant differences between any of the variables examined.

Sentence Disparity

The second area to be examined was that of disparity. As stated earlier, this has been the primary focus of most sentencing research and seems to have partly evolved from the concern for offender rehabilitation. Inequitable discretionary decisions arose in the past from the well-intentioned motive of providing individualized treatment to curb criminal tendencies. For example, a judge, upon being informed that a treatment program designed for offenders' needs was available, may set sentencing according to program length, rather than to other standardized sentences comparable for the same offence. But, more generally, sentence disparity is of concern when it arises from minority, socio-economic, or geographic biases. Women, native Indians, the poor, urban/rural individuals receive sentences differing from their counterparts. With the recent implementation of section 15 of the Charter of Rights, the equality section, sentencing reformers acknowledge a sensitivity to these disparities. Again, it has not been clear what constitutes sentence disparity for the offenders themselves. A number of questions focussed specifically on this issue. Twelve questions were included in five categories: socio-economic, geographical, judicial, racial, and sexual.

The offenders surveyed obviously believe in the power of money. Seventy-six percent disagreed or strongly disagreed that

> Rich people receive the same sentence as others for the same crime

and 81% believed that

> If a person can afford a good lawyer, their chances of getting light sentences are better.

While 74% felt that the same sentence should be handed down regardless of location, 54% indicated they did not believe the same sentences were being given throughout British Columbia. On the other hand, 34% were neutral on the last question.[4]

Racial sentencing disparity relative to native Indians was felt to exist for 59% of the offenders, while another 59% indicated women should receive the same sentences as men for the same offences. The last question produced an interesting male/female difference, although this was not significant. Females tended not to agree with their male counterparts (p=.0982) that their sentences should be the same (mean=64), as compared with the males (mean=79). Perhaps, and this is offered only as speculation, women feel their sentences are relatively more onerous to begin with, given their secondary role in society.

Most of the questions on the disparity topic were related to the role the judiciary played in sentencing. Judges did not emerge with the offenders' confidence. A summary of the findings indicate, first, that

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[4]Based on comments during the interview, the B.C. geographic section may have been interpreted as a knowledge question rather than an attitudinal one. Those with little experience or knowledge of outside the Lower Mainland may have circled the neutral 'no opinion' category.

1. Participants believed some judges sent some people to prison more than other judges (98% agree/strongly agree).
2. It does not matter which judge you appear before, they are all the same when it comes to sentencing (90% disagree/strongly disagree).
3. The same judge may be, in sentencing, tough on some crimes but not so tough on others (92% agree/strongly agree).
4. In sentencing, the same judge may be hard on some offenders but not so hard on others (93% agree/strongly agree).

Responses were evenly distributed to the question,

5. Unjust short sentences are pretty rare (39% disagree/strongly disagree; 26% neutral; 35% agree/strongly agree).

But not to the question,

6. Unjust long sentences are pretty rare (76% agreed/strongly agreed).

Concluding this section, therefore, it appears offenders do not operate under the assumption that the judge is a neutral, objective arbiter, but instead they ascribe to him or her idiosyncratic decision-making and sentence formation. Again, the reality of this view is not at issue but rather the perception itself, as related back to the acknowledged importance of justice being <u>perceived</u> as being done.

Post-sentencing Issues

There has traditionally been concern on the part of the public over parole release procedures and a general misunderstanding about mandatory release and supervision procedures. Many conservative citizens do not want criminals back on the street, nor do they want sentences "cut" by corrections. Different worries are registered by the liberal citizenry who argue that these procedures and release decisions are discretionary, often not adhering to the rights of the offenders. These concerns translate into a chronic problem issue for corrections. It can be viewed as a management issue as well. Offenders who are unclear about when they will be released have greater stress, it has been argued, and less motivation to participate in the institution's programs. Since the criteria for release are not perceived to be consistently followed, sentences become a form of indeterminate sentence, relying upon biases of the parole board or institution staff. It will be seen in the conclusions that perhaps this uncertainty is not as justified a damnation as it originally appears to be, but first, it is of interest to note the perceptions of the offenders.

Beginning with the question

I would like to see prison sentences...

Five options were presented. The summary of responses is as follows:

a. With straight time and temporary absences (no mandatory supervision, no parole) - (61% disagreed/strongly disagreed)

b. With only mandatory supervision (no parole) - (68% disagreed/strongly disagreed)

c. With only parole (no mandatory supervision) - (bimodel response: 51% disagreed/strongly disagreed; 35% agreed/strongly agreed)

d. With mandatory supervision and with an early release through parole (like it is now) - (another bimodel response: 37% disagreed/strongly disagreed; 46% agreed/strongly agreed)

e. The way it used to be with only parole and time off for good behaviour (no mandatory supervision) - (59% agree/strongly agreed).

Therefore it appears that mandatory supervision is not necessarily viewed as a positive procedure, with the offenders indicating a desire for a return to the old system without mandatory supervision.

When asked more specifically about who should receive mandatory supervision, an interesting breakdown occurred.

In response to

Mandatory supervision for violent offenders - (59% agreed/strongly agreed)

Mandatory supervision only for sexual offenders - (bimodel response: (59% agreed/strongly agreed; 42% disagreed/strongly disagreed)

Mandatory supervision only for property offenders - (46% agreed/strongly agreed)

Mandatory supervision for all offenders - (44% disagreed/strongly disagreed; 30% neutral; 25% agreed/strongly agreed).

But 59% of the offenders felt that mandatory supervision was helpful to long term offenders.

Therefore, while most offenders showed a distaste for the 'only mandatory supervision' option, they agreed that it should be used for violent offenders. This conforms with the interview data, which more pointedly indicates a dissatisfaction with mandatory supervision. Further, federal inmates were less in favour of only having mandatory supervision than any other groups ($p=.0068$).

Looking at the breakdown, a one-way ANOVA revealed that those on parole and mandatory supervision have a more negative outlook and are statistically different from provincial offenders on the question of whether mandatory supervision should be used to help long-term offenders ($p=.0425$). A t-test further indicates that those who have applied for parole also have a more negative attitude towards parole procedure. Parolees were less in favour of having the system remain the same, that is, mandatory supervision and an early release through parole ($p=.009$).

For the option 'only parole', not as many disagree. On the other hand, straight time with no parole or mandatory supervision leaves no hope or incentive, according to the interview data. And, as noted, parole is perceived as better than prison in any case.

Although the status quo received support, it was the option of parole and time off for good behaviour, with no mandatory supervision (in other words, the way it used to be), that received strongest support (59%). Those with more

experience in the federal system appear wary of mandatory supervision and this may account for the strong minority who disagreed with the present arrangement of mandatory and parole release (38%).

Parole did not appear without fault either, but 65% indicated that parole procedures were fair. This differs significantly from offenders surveyed in the Australian Law Reform Commission Study, 71% of whom indicated they thought the parole system was 'pretty unfair' or 'very unfair'. However, in the present study, the offenders believed parole chances were better if the prison staff supported them (58% agreed/strongly agreed). There was a bimodel split on whether it was clear what the parole board expects of the offender (43% agreed/strongly agreed; 45% disagreed/strongly disagreed). Fifty percent felt parole restrictions were unfair, but even so, 78% believed parole is better than prison. The majority of offenders believe that some kind of negotiated contract with the National Parole Board would be best to establish clear agreement about release conditions (87% agreed/strongly agreed). Overall then, parole received higher ratings than mandatory supervision.

The fact that most categories of offender surveyed do not agree with the question

> When the Parole Board attaches special conditions, or restrictions on a parolee, they are usually fair,

whether they are not on parole or have not applied for parole, indicates a general negative outlook which may

affect their attempts in applying for parole or their hopes of obtaining it.

As far as the perception of Parole Board expectations is concerned, it appears probationers have a more positive attitude about this than parolees and federal inmates ($p=.0183$). There is also a significant difference between the opinions of lifers and federal inmates with, as one might predict, the lifers having more negative attitudes about the expectations ($p=.001$). The interviews suggest that it is felt that the Parole Board makes its decisions inconsistently.

An analogous breakdown occurs with the question concerning the fairness of parole conditions; those having experienced parole being more dubious about its fairness. Comments in the interviews suggest that offenders feel the conditions are too stringent and are discretionarily enforced; therefore, the desire to structure by way of a negotiated contract. The exception here was with probationers ($p=.0127$) who seem to feel a contract is not necessary.

In concluding this statistical section, from the responses generated, it is found that parole is viewed as something potentially beneficial by most offenders, but the release procedures need redirecting toward assisting the offender rather than primarily controlling him/her.

Sentencing Guidelines

One of the major interests of the Sentencing Commission has been the idea of establishing sentencing guidelines for the Canadian judiciary to reduce disparity in sentencing. Therefore, each of the five questions referring specifically to guidelines will be detailed. These responses, along with those on disparity in the second section, strongly indicate offenders want structure and consistency, in other words, predictability and certainty. The questions were

a. Some crimes are so serious they should be given a prison term - (74% agreed/strongly agreed)

b. The law should give more direction to judges on how short or long a prison sentence should be - (68% agreed/strongly agreed)

c. Sentences should be based on consistent national standards with offenders only getting more or less severe sentences in exceptional cases - (62% agreed/strongly agreed)

d. Judges need to be guided by minimum and maximum sentences for each offence - (56% agreed/strongly agreed)

e. Laws should be passed to prevent judges from giving too much prison time for some offences - (88% agreed/strongly agreed)

It appears that offenders would be supportive of the establishment of sentencing guidelines. Offenders are in favour of restricting judicial power to some extent through minimum and maximum sentences; although in the interview results it will be

seen that this question really should have been made into two. Offenders appear to support maximums, but only want minimums for certain very serious offences.

They seem also to support the idea of national standards but suggest the need for judicial discretion to consider the individual's circumstances surrounding each crime, as discussed in the next section. No differences of significance arose with this topic.

Extra-legal Factors

Another area of sentencing research often addressed in the literature is the impact extra-legal factors have upon sentencing outcome; but, again, this is not a mutually exclusive topic from other issues such as disparity. Hogarth brought this matter to the attention of the Ontario Provincial court judges in his 1969 survey and found his subjects agreed to the importance of factors other than strictly legal ones in forming appropriate dispositions. Such variables as guilty pleas, use of weapon, the offender's age, would direct the judge in making more suitable decisions.

Twenty-one items to be considered were presented to the offenders studied in the present study. The full responses can be seen in the frequencies reported in Appendix C. However, only responses of note will be presented here. For example, 59% of those surveyed felt judges did not take into consideration time

spent in custody before sentence. Eighty-eight percent believed police laid too many charges for a single offence.

For specific mitigating factors the categories always, sometimes, or never were employed in a check list manner.

Factors indicated to be of most importance were extent of harm to victim (66% always); if the crime was premeditated (70% always); if a weapon was used (67% always); the mental state of the offender (75% always); the time the individual spent in custody pre-sentence (73% always); and the role the accused played in the offence charged jointly with others (57% always). Where the crime was a frequent one in the community (22% always); or whether the offender saved the cost of a trial by pleading guilty (22% always); were not salient mitigating factors for most offenders.

A number of significant differences emerged between groups when looking at the extra-legal factors. Men more than women agreed that judges should take into account time spent in custody pre-sentence ($p=.0037$). As well, on the question whether the judge should take into account the offender's family background, men felt this should always be considered 45% of the time and women 68% of the time ($p=.028$).

With the first offender/recidivist breakdown, first offenders felt that one consideration should be whether the offender seems likely to commit an offence again with 74% indicating always; whereas with recidivists this was only 53% ($p=.015$); an understandable difference. Another factor with the

first offender/recidivist breakdown was whether the offender has repaid or in someway made amends to the victim; 33% of first offenders always felt this should be considered and with recidivists, 60% felt that this should always be considered (p=.002); not as clear a finding.

With parolees and offenders not on parole, one significant difference emerged from the question of whether the offender's ties with the community should be considered; 54% of the parolees felt this should always be considered, whereas for those not on parole this was 'always' true for 41% (p=.047). They differed as well on agreement as to the extent the criminal record should play in mitigating sentence; 25% of the parolees felt this should always be a factor and, for those not on parole, 50% felt this should always be a consideration (p=.013). The last difference was with the consideration of the offender's family responsibilities. Here 64% of the parolees indicated this should always be a factor and, for those not on parole, only 49% felt this the case (p=.027).

The family responsibility variable appeared the most interesting in the cross-tab results between lifers and other federal prisoners as well. A one-way ANOVA (p=.0089) produced significant differences between these two groups. Lifers appeared to be more in favour of this factor in sentencing than the other groups. It may be speculated that because lifers are forced to be distant from their families for such a long time, they are more sensitive to the fact that the remaining family

members may have to go on welfare, or at least must become completely self-sufficient as a result of the lifer's exit from their lives.

Although the interview results discussed below indicate offenders believe guidelines for plea negotiations would greatly improve the trial process, the responses to the two questionnaire items on this issue are not clear cut. Over one third of the offenders were neutral about whether a guilty plea should mitigate the sentence and it was a near split on whether one should accept a lawyer's deal for a lighter sentence or not (43% strongly disagreed/or disagreed; 38% agreed or strongly agreed).

Sentence-Offence Relationships

An intriguing question to ask offenders is what they themselves feel would be an equitable sentence for an offence. Since they are the ones enduring corrections sanctions, would they necessarily indicate more lenient sentences as the most appropriate and just? Therefore, with this in mind, the task of matching 10 offences with 12 possible dispositions was assigned the offenders. A comparison group with non-offenders was not incorporated, but the various sub-groups themselves could be compared.

Originally the first three dispositions listed by the offender were recorded for each offence. However, the

frequencies indicated that few people chose more than one sentence for each crime. Of those who did, there appeared to be little difference between the first, second and third choices, relative to the type of sentence given. Thus, the discussion following will focus on the first sentence recorded. For the purpose of analysis, the sentences were collapsed as noted in Table 3.

The responses provided a reliability check on the rationale used when constructing the questionnaire, that is, minor crimes received the least servere penalties, while major crimes received the most severe. White collar crimes, especially the most identifiable ones of polluting the environment, received minimal levels of sentencing; while sexual assault was rated as severe by the vast majority of respondents. This was also evident from the interviews. Impaired driving had an even distribution with many recommending sentences in the first two columns, but the majority preferring provincial time.

Table 3

Frequency of Sentences Chosen for Offence

Offence	Noninstitutional Sentence[1]	Monetary Sentence[2]	Provincial Sentence[3]	Federal Sentence[4]
Break and Enter	51% (78)	16% (24)	28% (43)	6% (9)
Common Assault	61% (94)	10% (16)	25% (39)	3% (5)
Arson	12% (18)	11% (17)	31% (47)	45% (68)
Murder	.7% (1)	0% (0)	5% (8)	94% (139)
Impaired Driving	30% (45)	23% (35)	35% (53)	13% (20)
Bribery	39% (57)	21% (31)	29% (42)	11% (16)
Sexual Assault	3% (5)	3% (4)	7% (11)	87% (135)
Possession of Marijuana	70% (107)	24% (36)	6% (9)	.7% (1)
Polluting the Environment	41% (61)	31% (47)	16% (24)	12% (18)
Trafficking in Heroin	19% (29)	6% (9)	25% (38)	50% (77)

[1]Includes: discharge with no conditions
discharge with conditions
suspended sentence
probation
community work order

[2]Includes: fine
paying money to the victim

[3]Includes: intermittent jail sentence
prison (less than 2 years)

[4]Includes: prison (2 to 5 years)
prison (5 to 10 years)
prison (more than 10 years)

A number of group comparisons revealed interesting differences according to the specific offence listed. For break and enter, for example, probationers tend to give lower sentences than parolees (p=.0497). This is consistent with probationers' more lenient positivistic attitude to sentencing overall, as seen in this study. For assault and impaired driving, property offenders gave more severe penalties than drug offenders (p=.0438). For polluting the environment, there was a significant difference between the most highly educated in their responses and those with less than Grade X education. The sentencing options seem to increase with education level, but this is not proven from the study. Lifers tend to give harsher sentences generally for this offence, but they also tend to be more educated as a group.

There are male/female differences for murder and heroin offences, with females giving more lenient sentences for both (p=.0063). Drug offences were an important issue in female prisoner populations generally. The women were concerned with the length of time drug offenders received. They did not tend to view the offence as a particularly onerous one. However, the number of women in prison for drug related crimes did not differ statistically from the number of men imprisoned for the same crimes in the study.

Finally, it was intriguing to note a number of non-significant differences. There were no significant differences, for example, between sex offenders and others on

their opinions about sexual assault sentencing; nor between lifers and other federal inmates on the issue of sentencing for murder; nor between sexes on the issue of sentencing for sexual assault, as might have been predicted.

Importance of Actors

The last section deals with the offenders' perceptions of the relative importance various actors play in the sentencing process. Here the category choices were four: not important, somewhat important, important, and extremely important. Since there were only seven parties listed, the 'extremely important' category responses will be provided for each:

Police Role - 34%
Prosecutor - 53%
Defence - 40%
Judge - 78%
Expert Witness - 26%
Offender - 36%
Victim - 31%

It can be seen that the judge is perceived as most important, with the Crown second in authority. The victim is only perceived as being of little more importance than the expert witness in the process; psychiatrists and technical

experts are apparently low in perceived influence, an interesting finding in the light of their proven impact on sentencing.

Also, the finding of the second place ranking of the Crown is of interest in light of the interview results. Although this lawyer is acknowledged to be of importance in plea negotiation, it appears the role of police is viewed as more significant from the standpoint of the concern about overcharging. The discussion about the relationship between plea-bargaining and police overcharging was well-articulated in the group discussions.

Statistics performed on the importance of the variable "offender" revealed a significant difference between post-secondary school graduates and high school graduates. The more educated the offender, the more importance seemed to be placed on the offender in the sentencing process. This may be a reflection of self-image; the more highly educated the individual, the more he/she might value his or her role of control in the trial process.

Finally, the question was posed as to the perceived justice of the offender's own sentence. Just as with the matching task of disposition to offence, the possibility existed that those being punished would not be able to acknowledge that their punishment was just. While the majority disagreed (or strongly disagreed) that their sentence was fair (48%), it was of interest to find out if there were identifiable groups of offenders who perceived their sentences to be fair. The question

to them was

> The sentence I received was pretty fair - overall, 39% strongly agreed or agreed.

Those who answered agreed or strongly agreed to this statement came from the following subgroups and groups:

1. Subgroup	N	% of Group
Female	15	60
Male	64	46
First Offenders	22	63
Recidivists	50	44
Those on Parole	33	55
Not on Parole	44	44

2. Group	N	% of Group
Probation	6	60
Provincial Inmates	34	54
Federal Inmates	13	21
Mandatory Supervision	6	32
Parole	5	56

Considering the responses to questions concerning perceived fairness of parole, perceived disparities in sentencing generally, and the perceived goal of sentencing as punishment, it is surprising that the individual's perception of his/her own sentence is that it was fair. The differences of note are between probationers (60%) and federal inmates (21%), and a further breakdown indicating lifers differ from other federal inmates in a negative direction, again understandably. Probationers are the 'odd man out' group and it is hard to explain why their perceptions vary on this issue as well as early ones. Perhaps they are the least affected by the sentencing process and it is only with deeper involvement that perceptions are more consistently altered.

B. Interviews - Summary of Responses

Introduction

Group interviews were successfully completed in 12 settings. These included four provincial institutions (three male and one female), three federal institutions, and five private agency programs. The numbers interviewed in each setting are as follows (see p. 8 for setting descriptions):

PROVINCIAL

Lower Mainland Correctional Centre (Oakalla) - main jail, west wing (N=11) and Westgate B (N=9).

Lakeside Correctional Centre (N=14).

Vancouver Island Regional Correctional Centre (N=20).

Allouette River Unit (N=12).

FEDERAL

Matsqui Institution - general population (N=17) and Matsqui Lifer's Organization (N=16).

Kent Institution (N=20).

Robson Street Community Correctional Centre (N=6).

Balaclava House (N=5).

Howard House (N=2).

John Howard Society, Sexual Offender Program (N=13).

St. Leonard's Society (N=3).

Creative Community Services (N=9).

The total number of sentenced persons who participated in group interviews was 157, including 26 who participated in the pretest of the questionnaire and interview format at the Vancouver Pre-trial Services Centre (see Figure 1, p. 14).

Methodology

Following the pre-test of the questionnaire and interview format at the Vancouver Pre-trial Services Centre, it was determined that the completion of the questionnaire and the follow-up interviews should occur as closely to one another as possible. It was therefore decided that (wherever possible) a random selection of offenders would take place and a time established for them to meet with the researchers. At this meeting, the offenders would be asked to complete the questionnaire and remain for a follow-up discussion. As a result, almost everyone who completed a questionnaire participated in an interview (157 of 165).

Five categories of questions were selected from the major elements of the questionnaire to direct the group interviews. These were:

1. Of the six items mentioned in question 1 (questionnaire), what seem to be the most important reasons for sentencing offenders? What might be added to the list?
2. Do you think there is inequality in sentencing? (If so, where?).
3. How do you feel about parole and mandatory supervision? Any suggestions for change? (Refer to question 25 - questionnaire).
4. (An example was provided of a crime where minimum and maximum penalties are written in law). How do you feel about maximum and minimum penalties? Should there be guidelines to restrict the length of sentences judges can give?
5. What do you think of plea-bargaining? Is police overcharging common? What do you think about it?

Interview Results

Opinions from the interviews are summarized according to the seven categories of interest outlined in the objectives of the study. Discussion did not occur in all of these areas for every group. As can be seen from the interview questions, the preponderance of discussion was likely to occur in the areas of purposes and principles, disparity, post-sentencing issues,

sentencing guidelines, the offence - sentence relationship, and extra-legal factors in sentencing. A summary of the general opinions expressed across all groups will be provided in each of the seven areas and differences between groups will be noted wherever they occur.

Purposes and Principles of Sentencing

The majority of comments in this area identified punishment of the offender as the most obvious purpose in sentencing. Public safety was regarded by most groups as a secondary, but important, purpose. In the public safety category, those who commented were consistent in their opinion that, while punishment could be considered a general goal applying to all categories of offensiveness, public safety should be regarded as a goal particular to the seriousness of the offence, or the character of the offender. Several groups identified violent offences and the sexual offender as the most obvious concerns related to public safety.

All groups appeared to be in general agreement that, wherever possible, alternatives to imprisonment (restitution, community service, etc.) ought to be used. Consequently, it was a general opinion that these programs should be increased. The goal of rehabilitation was consistently devalued in the group discussions. However, the idea that one could "learn from one's mistakes" and give evidence to this through effective community

service or restitution to the victim was consistently expressed. It would appear that the concept of rehabilitation was associated, by the majority of respondents, to prison programs. It appeared that most groups assumed that rehabilitation was considered by the judiciary as a legitimate objective in sentencing and that sentences of imprisonment could incorporate that objective. The objective of rehabilitation in relation to imprisonment was considered by the offenders to be naive and unworkable.

Sentencing Disparity

The issue of sentencing disparity generated considerable discussion in all groups. There were two matters related to sentencing disparity where all groups were in strong agreement. These were: socio-economic circumstances; and, subjectivity arising out of judicial bias or prejudice. It was strongly believed that the ability to employ defence council who are adept at "judge shopping" is directly related to the outcome in sentencing.

Examples were provided, by some groups, of disparity in sentencing as between men and women and as between urban and rural settings. It was generally believed that sentencing in rural areas is harsher than in urban areas and that men receive harsher sentences than women. There was strong agreement that native persons suffer discrimination in the sentencing process.

The opinion was expressed by several groups that crimes committed by police or law enforcement officials are treated much more leniently than for the "regular" citizen.

Post-sentencing Issues

Two issues dominated the discussion in this area: mandatory supervision and parole. The majority of opinion across all groups was that mandatory supervision should be severely modified or abolished and that the system for granting and administering parole should be reformed.

While a minority expressed the view that mandatory supervision might make sense for selected categories of offences and offenders (again, violent offences and sexual offenders were mentioned), the most consistent recommendation was for the abolition of mandatory supervision and a return to the "old" system of statutory and earned remission.

All groups appeared to support a concept of conditional release. However, the groups were unanimous in the expression of dissatisfaction with regard to the make-up of the Parole Board, the "arbitrariness" of the conditions attached to parole, the lack of clarity with regard to the criteria used in granting and revoking parole, and the lack of positive support and assistance while under supervision.

Most groups argued for changes in the composition of the Parole Board. Nearly all groups believe the Parole Board

appointments to be too "political", but there were differences of opinion with regard to whether or not the Parole Board should be "better trained" and more "professional". There was also some divergence related to whether there should be greater or lesser involvement or influence in the parole process by institutional authorities. Opinions were strongly expressed on both sides of these issues. Nearly everyone believed that the parole process should be more "open" and that reasons for decisions should be more effectively communicated to the inmate.

Sentencing Guidelines

There was general agreement across all groups that some form of sentencing guidelines should be provided. Most groups were very careful to qualify this response with the concern that the ability to consider individual circumstances be retained in the development of sentencing standards or guidelines.

With regard to the issue of whether or not minimum and maximum sentences should be provided in law, most groups expressed the opinion that maximum sentences should be prescribed in law, but that minimums should not be set except, perhaps, for very serious offences (again, sex offences became the example).

The opinion was expressed by several groups that the range of options for sentencing in relation to some offences is too broad (where current minimum/maximums exist) and there is a

greater need on the part of the offender for "certainty" and consistency with regard to the punishment for crime.

Extra-legal Factors in Sentencing

In the interviews, two matters were discussed related to this category of interest: plea-bargaining and police overcharging. There was general agreement that both plea-bargaining and overcharging are very common occurrences. These behaviours seemed to be accepted by most interviewees as "part of the system". The opinion was often expressed that plea-bargaining should be more "open" and that the judge should be party to any agreements made in the plea bargaining process. Those interviewed were generally clear about the relationship between overcharging and plea-bargaining. The suggestion was made that if overcharging were reduced then plea-bargaining would also be reduced to the extent that overcharging may be used for the purpose of effecting a bargain. However, there seemed to be a recognition that plea-bargaining involves more than simply a response to superfluous charges.

Several offenders related the phenomenon of plea-bargaining and overcharging to the requirement for adequate defence counsel and the opinion was expressed that, if such counsel cannot be obtained, then the accused is left at a significant disadvantage. Thus, plea-bargaining is unfair to the extent that the accused is not able to obtain defence counsel capable of

using this behaviour to the accused's advantage.

Offence-Sentence Relationship

In this category, comments in the group discussion tended to support the idea that the "punishment should fit the crime". Specific offence categories considered were sexual offences (believed to be too lenient), narcotics offences (believed to be too harsh) and murder (15 - 25 year minimum unreasonable). In this category, more so than the other categories, the discussion on the relationship of offence and sentence was very much directed by the circumstances in which the interviewees found themselves. Consequently, the Matsqui Lifer's Organization tended to concentrate on the factors related to life sentences, while the probation group advocated that restitution and community service orders be used more frequently and for a broader category of offences. Two groups (one provincial and one federal) offered the opinion that the death penalty ought to be reintroduced as a choice available to some offenders receiving a life sentence. Nearly every group expressed the opinion that long prison sentences are counter-productive regardless of the offence.

Importance of Actors

Judges were viewed as the most important actors in the sentencing drama. Several groups advocated the early retirement of judges and the opinion was commonly expressed that judges tend to develop bias arising from their total life experience which may make them prejudicial in relation to certain offences. Additionally, an opinion was expressed regarding the need for special training for judges to familiarize them with the conditions and programs associated with various sentencing options and to reduce the development of bias arising out of isolated and personal experiences. In the group discussions, defence counsel was frequently mentioned as an important actor. Many comments related to the requirement for experienced and adequate defence and the disadvantage of not being able to afford to acquire such a person.

A number of comments related to the influence of police in sentencing with most persons believing that police influence is too great. The use of overcharging was given as one example of inappropriate police power. This significance of the police for the offender was not evident from the questionnaire ranking the importance of actors, and represents one of the few inconsistencies between the two methodologies.

In at least one group, correctional administration was identified as important in that the recommendations of judges related to the purpose and place of sentence may not be

followed. Correctional administrators also were regarded as having significant power in relation to recommendations for release.

The influence on the public mood by the media was viewed as significant in that the media exerts both direct and indirect pressure on the judiciary.

Conclusion

Generally, the opinions expressed in these group interviews were consistent with regard to topic. Differences which occurred tended to relate to the location and, in some cases, the offence category of the respondents. For example, while the majority of groups believed sexual offenders were treated too leniently, the sex offender group at the John Howard Society expressed considerable frustration with the severity of conditions applied to them. Federal prisoners were very concerned about conditional release questions and most appeared knowledgeable with regard to the make-up of the Parole Board and the problems associated with both parole and mandatory supervision. The probation group and some provincial prisoners evidenced very little knowledge or concern in these areas. The probation group tended to concentrate much more on ideas related to the benefits of non-custodial options in sentencing. Therefore, the general difference across groups was the emphasis arising from their own situation rather than any significant differences of opinion on the sentencing questions.

IV. CONCLUSIONS

One of the worthwhile questions to pose at the end of a study concerning sentencing disparities and sentencing guidelines is why the topic was considered in the first place. Taking the issue of sentencing guidelines, for example, why has such a policy been put forth? This is probably not an idea arising from the judiciary, who possess understandable sensitivity to judicial independence in sentencing matters. Many judges express dissatisfaction with the legislative guidelines already in place, such as those stated in the Declaration of Principles for the Young Offenders' Act. The public, on the other hand, are unaware of sentencing disparities for the most part, except where profiled by the media. However, citizens are incensed by the perceived rise in crime. The general mood of the community has definitely moved away from the 1970's prisoners' rights era. In fact, the emerging philosophy behind the just deserts' model is the most probable explanation for the mandate and terms of reference set out by the Sentencing Commission. The goal of rehabilitation has proven itself worthless. The disparate sentencing resulting from that model is now unacceptable. The goals of sentencing have shifted.

An interesting comparison then, with which to begin the conclusions, is one between British Columbia offenders and British Columbia judges. Under the same mandate from the

Sentencing Commission, B.C. judges were also surveyed to determine their attitudes on sentencing practice. An intriguing difference to emerge is what each group considered to be the goal of sentencing. To illustrate the potential problem here, if judges sentence for deterrence, but offenders believe that it is for rehabilitation, the conflict concerning purpose might then affect the outcome. And, it is suggested, this is the long-term focus for the Sentencing Commission; that is, if sentencing practices are reformed then offenders will be better citizens emerging from the other end of the system, not necessarily rehabilitated in a medical model sense, but more law abiding.

The results unfortunately do not support the idea of a consistent outlook between judges and offenders. Almost 90% of the surveyed judges indicated a belief in the protection of the public as the underlying purpose of sentencing. The offenders, it will be recalled, listed that as a secondary goal of sentencing, after punishment of the offender. What results is a mismatch, which may explain some of the disparity concerns of the offenders. If judges sentence for the protection of the public, sentence length may vary according to the perceived dangerousness of the offender as opposed to the seriousness of the offence, or the deservedness of the penalty. It is clear from the questionnaires that offenders visualize a scale of punishment. This conclusion can be derived from the results of the task which matched sentences to a given list of offences as well as from their responses to questions concerning unjust

sentence length. Therefore, the perception of disparity in sentencing may, in fact, be a misperception related to purpose. It is suggested that the police perception of the goal of sentencing is also protection of society, as that is their primary professional function. Offenders perceived police as overcharging to get a conviction; and judges as attempting to get offenders "off the streets".

Therefore, offenders do not appear to believe a 'just' scale of punishment is in operation. This is also reflected in their responses to the 'lawyer' questions as well. If you are rich and hire a good lawyer, you will receive a lighter sentence regardless of what is deserved. But the offenders were ambivalent as to whether they should accept a lawyer's deal. The best indicator that the scale of justice is not perceived to work was the majority indication that offenders thought their sentence was unfair (48%). The stated principles of sentencing in the Criminal Law Reform Act are concerned with a "just deserts" model having sentences proportionate to the offence, employment of the least onerous alternative in the circumstances, the maximum punishment prescribed only in the most serious cases of the commission of the offence, and so forth. But perhaps these purposes are not conveyed or convincingly demonstrated to the offender in the courtroom. Once out of the courtroom and under supervision in the community or the institution, these ideals are never articulated for the offenders in their actual treatment, or in the reality of the

sanctioning process, therefore the resulting disillusionment. In any case, clarification of the purpose for the sentencing experience is indicated from the results.

Another area examined in the present study surrounded the parole and mandatory supervision release procedures. Offenders were concerned about the uncertainty of sentence length resulting from arbitrary parole and mandatory release decisions. In other words, offenders perceived their sentence as a form of indeterminant sentence, which was regarded as unjust. The offenders wanted more predictability about when they would be finished, in order to plan for their future, to have hope. Others, such as prisoners' rights groups, have advocated this for them as well.

Interestingly, a recent study was completed in the United States which evaluated determinant sentencing.[5] It came to the striking conclusion that determinant sentencing did not affect prisoners' attitudes toward obeying the law, toward prisonization, stress levels, inter-personal conflict, institutional conflict and institutional misconduct when compared with the perception of inmates on indeterminate sentence. In fact, for program involvement, determinant sentenced inmates participated in fewer rehabilitation programs than inmates serving indeterminant sentences. Finally, the determinant disposition appeared to have no effect on the ways

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[5] Determinant Sentencing and the Correctional Process: A Study of the Implementation of Sentencing Reform in Three States, National Institute of Justice: Washington, October, 1984.

prisoners deal with their families and planned for their release. The findings directly contradict those who advocate certainty in sentencing as the panacea for institutional management control of offenders.

The researchers did conclude, however, that the determinant sentenced inmates felt both more certain about the release dates and more equitably treated in the sentencing process, but "that these perceptions apparently do little to influence the types of adjustment they made to prison life".

The implication this has for Canadian offenders in the present study who indicated they want more certainty and equitableness about release, is not immediately clear. However, it does suggest that those advocating for a more structured certainty in parole and mandatory release procedures, cannot use institutional management control as an argument. What is missing in the U.S. study, is the follow-up. Perhaps even though attitudes appeared not to change toward the idea of obeying the law, recidivism would be affected through the experience of being dealt with justly.

In any case, a primary finding from the B.C. survey suggests offenders do desire such certainty, whether it be in parole release dates or actual sentence. They equate certainty with justice. They support sentencing guidelines and a general reduction in judicial discretion. Yet it is clear offenders also want a balance to the guidelines which can be achieved through a consideration of mitigating case circumstances. Factors such as

the extent of harm to the victim, whether a weapon was used, if the crime was premeditated, the time spent in custody presentence, and the accused's mental state, are to be weighed in the structured guidelines. With the exception of time spent in custody presentence, these factors have been indicated in two earlier surveys of provincial court judges as important variables in arriving at sentences. It does not seem unreasonable to conclude that if both the judged and the judge agree upon these factors as mitigating ones, they should be equated in the sentencing formula.

What is needed perhaps, is not so much structured sentencing guidelines, but selective information provided on an ongoing basis about dispositions across Canada. In this way, judges can be made aware, not only of actual sentences handed down for similar offences, but the case facts surrounding each disposition. This information should be able to assist the judge in knowing what other judges across the country are sentencing for cases similar to those before his/her own docket. This differs from legislated sentencing guidelines, leaving more discretion in the judge's authority.

The issue of judicial disparity in sentencing is not just a concern for Canadian offenders. A number of questions were asked in the present study which in part replicate the Australian Law Reform Commission study of sentencing completed in 1980. The results were similar. For example, two questions about unjust long or short sentences being rare, produced the following comparative breakdown:

B.C. Study - unjust long sentences are pretty rare:
agree/strongly agree - 13%;
neutral - 11%;
disagree/strongly disagree - 76%

Australian Study - unfairly long sentences are pretty rare:
agree/strongly agree - 19%;
neutral - 12%;
disagree/strongly disagree - 70%.

B.C. Study - unjust short sentences are pretty rare:
agree/strongly agree - 26%;
neutral - 35%;
disagree/strongly disagree - 39%

Australian Study - unfairly long sentences are pretty rare:
agree/strongly agree - 37%;
neutral - 22%;
disagree/strongly disagree - 41%

Perceptions of disparities in other aspects of judicial discretion were also comparable between the two studies. Responses to similarly worded items indicated that all categories of offenders believed particular judges were "harder" or "softer" than their brother judges. However, again it is difficult to determine whether or not this is true, because of the non-existence of comparative research on sentencing dispositions across Canada. There is evidence that natives are sentenced disproportionately (Hagan, 1974). Other similar studies have indicated the impact of socio-economic factors on differential sentencing (Warner and Renner, 1978). But most of the evidence remains locally circumstantial and therefore, from the offender's perspective, mystified. Subsequently, the offender's impression must be formed from the lack of concrete

evidence around sentencing. It is now an acknowledged tenet in judgment/decision-making theory that in the face of insufficient information, judgments tend to be based on biased or stereotypic information. This tendency is attributed to judges' judgments by the offenders themselves. Therefore, a recurring message emerging from the study appears to be the need for additional information for all participants.

The final area touching upon judicial discretion in sentencing, is the use of alternatives to imprisonment. In the interviews, offenders raised alternatives as a needed development. Indeed, the stated purposes of sentencing (645)(1)(d)(e) advocate promoting and providing opportunities for redress to victims or the community and for offenders to become law abiding members of society. Given this authority, and the mandate to provide the least onerous alternative in the circumstances, more community programs would appear to be in order. This should be all the more pressing with concern over prison over-crowding and in the current period of financial restraint. Offenders indicated agreement with this principle in their response to the question about the use of prison as a last resort, after other attempts have been made at employing forms of sanctions in the community. Also, when discussing the assistance parole and mandatory supervision could provide, offenders expressed the need for programs to assist in re-entry; retraining for job skills, socialization, and transition programs generally. None of these suggestions is especially

unpredictable or radical in nature, but perhaps concrete documentation will provide the incentive for actual creation and implementation.

Finally, although the offenders across all categories in this study were concerned about how to limit the effect judicial discretion has on sentencing, it is not thought they want to eliminate that discretion entirely. Their expressed wish for a consideration of the mitigating circumstances of each individual case suggests this is true. Perhaps the primary conclusion to be reached can now be expressed in the following quotation by Norval Morris in his article, "The Sentencing Disease": "Judicial discretion is essential to achieve the fine tuning needed in ascertaining punishment." There is a "...need to shape and control judicial discretion, not supplant it".

The offenders in the British Columbia study have now made their perceptions on sentencing practice known to the Sentencing Commission. It is hoped that their unique contribution will assist in determining the direction Canadian sentencing reform will take.

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APPENDIX A

Issues Raised in the Questionnaire

ISSUE	QUESTION NUMBER(S)
Purposes and Principles of Sentencing	1 (a to f), 18, 32
Disparity	
Geographical	8
Judicial	4, 7, 9, 11, 13, 15, 20
Racial	17
Sexual	22
Socio-economic	2, 6
Post-sentencing Issues	
Mandatory Supervision	24 (a to d), 31
Parole	14, 26, 27, 28, 29, 33
Parole and Mandatory Supervision	25 (a to e)
Sentencing Guidelines	3, 10, 16, 21, 23, 30
Extra-legal Factors in Sentencing	5, 12, 19, 34, 36 (a to q)
Offence-Sentence Relationship	37 (10 items)
Importance of Actors	35 (7 items)
Total Number of Items:	80

The Canadian Sentencing Commission
Commission canadienne sur la détermination de la peine

Thank you for participating in this survey. The Canadian Sentencing Commission is conducting a study to find out how you feel about some topics related to sentencing issues. Men and women serving sentences in the community and in both federal and provincial institutions are being asked to participate in this national study. Your identity and individual responses to this questionnaire will remain completely ANONYMOUS and CONFIDENTIAL.

The results will only appear in the form of summary statistics which cannot be traced to any participants. While we appreciate your taking part in this study, you should be aware that you are free to withdraw your participation at any time.

The Commission may be making recommendations with respect to the reform of some of our sentencing laws, therefore your input is very imporant. The questionnaire will take about 20 minutes to complete. Please try to be as accurate and honest as possible.

Should you have any questions regarding this study or how the information will be used, feel free to contact John Anderson or Liz Szockyj at 291-4762 or Dr. M.A. Jackson at 291-3515. Furthermore, if you would be interested in receiving a summary of the responses to this questionnaire when the study is completed in September, please fill out the form on the last page.

P.O. Box 2399
Postal Station "D"
Ottawa K1P 5W5

B.P. 2399
Succursale "D"
Ottawa K1P 5W5

Questionnaire

We are interested in finding out how you feel about some of the following statements.

If you strongly disagree, please circle "SD"

If you disagree, circle "D"

If you have no opinion or feel neutral about the question, circle "N"

If you agree, circle "A"

If you strongly agree, circle "SA"

1. In your opinion, the reason why offenders are sentenced is to. . .

a) protect the public.	SD	D	N	A	SA
b) to punish them for what they have done.	SD	D	N	A	SA
c) to stop others from committing a similar crime.	SD	D	N	A	SA
d) to provide opportunities for them to improve themselves (through training or social programs).	SD	D	N	A	SA
e) to pay society back for the wrong done.	SD	D	N	A	SA
f) to pay back the victim for the harm done to them.	SD	D	N	A	SA

2. Rich people receive the same sentences as others for the same offences.	SD	D	N	A	SA
3. Throughout Canada, similar crimes committed by similar types of persons (similar record, etc.) should get similar sentences regardless of where the person is convicted.	SD	D	N	A	SA

4. Some judges send people to prison more than other judges.	SD	D	N	A	SA
5. When sentencing, judges take into account time spent in custody during remand.	SD	D	N	A	SA
6. If a person can afford a good lawyer, their chances of getting a light sentence are better.	SD	D	N	A	SA
7. Unjust long sentences are pretty rare.	SD	D	N	A	SA
8. Offenders in the Lower Mainland get the same sentences as offenders in the rest of British Columbia.	SD	D	N	A	SA
9. Unjust short sentences are pretty rare.	SD	D	N	A	SA
10. Some crimes are so serious that judges should not be allowed to give anything less than a prison term.	SD	D	N	A	SA
11. The sentence I received was pretty fair.	SD	D	N	A	SA
12. The accused should be given a lighter sentence because he or she pleads guilty.	SD	D	N	A	SA
13. It doesn't matter which judge you appear before, they're all the same when it comes to sentencing.	SD	D	N	A	SA
14. Parole procedures are really pretty fair.	SD	D	N	A	SA
15. The same judge may be, in sentencing, tough on some crimes but not so tough on others.	SD	D	N	A	SA
16. The laws should give more direction to judges on how short or long a prison sentence should be.	SD	D	N	A	SA
17. Native Indians receive the same sentences as others do for the same crimes.	SD	D	N	A	SA
18. Offenders should only be sent to prison if they cannot learn from less severe sentences (such as fines, suspended sentences, probation).	SD	D	N	A	SA

19. To get a lighter sentence, the accused should accept a deal made between the Crown prosecutor and his or her lawyer. SD D N A SA

20. In sentencing, the same judge may be hard on some offenders but not so hard on others. SD D N A SA

21. Sentences should be based on consistent national standards with offenders only getting more or less severe sentences in exceptional cases. SD D N A SA

22. Women should receive the same sentences as men for the same offences. SD D N A SA

23. Judges need to be guided by minimum and maximum sentences for each offence. SD D N A SA

24. Every federal inmate may serve the last third of his or her sentence in the community under the supervision of a parole supervisor (mandatory supervision). In your opinion, mandatory supervision should be used for. . .

a) violent offenders. SD D N A SA

b) sexual offenders. SD D N A SA

c) property offenders. SD D N A SA

d) all offenders. SD D N A SA

25. I would like to see prison sentences. . .

a) with straight time and temporary absences (no mandatory supervison, no parole). SD D N A SA

b) with only mandatory supervision (no parole). SD D N A SA

c) with only parole (no mandatory supervision). SD D N A SA

d) with mandatory supervision and an early release through parole (like it is now). SD D N A SA

e) the way it used to be with only parole and time off for good behavior (no mandatory supervision). SD D N A SA

26. It is clear to offenders what the parole board expects of them to obtain an early release.	SD	D	N	A	SA
27. If prison staff are backing an inmate, his or her chances of getting parole are good.	SD	D	N	A	SA
28. When the parole board attaches special conditions or restrictions on a parolee, they are usually fair.	SD	D	N	A	SA
29. Reporting to a parole supervisor and obeying the parole rules is <u>better</u> than being in prison.	SD	D	N	A	SA
30. Laws should be passed to <u>prevent</u> judges from giving too much prison time for some offences.	SD	D	N	A	SA
31. Mandatory supervision should be used to help those offenders who have been in prison for long periods of time.	SD	D	N	A	SA
32. It is important that judges tell the offender exactly why he or she is getting a particular sentence.	SD	D	N	A	SA
33. An inmate and the parole board should <u>work together</u> to establish a clear agreement (a contract) about release conditions.	SD	D	N	A	SA
34. Police lay too many charges for a single offence.	SD	D	N	A	SA

1 = not important at all
2 = somewhat important
3 = important
4 = extremely important

35. How <u>important</u> is the role of these different parties in the sentencing process. . .				
a) the police.	1	2	3	4
b) the Crown prosecutor.	1	2	3	4
c) the defence counsel.	1	2	3	4
d) the sentencing judge.	1	2	3	4
e) expert witnesses.	1	2	3	4
f) the convicted offender himself or herself.	1	2	3	4
g) the victim.	1	2	3	4

36. How often should the judge take the following factors into account when sentencing an offender?

	Always	Sometimes	Never	Don't know
a) the extent of harm to victim.	1	2	3	4
b) whether the crime was premeditated (planned).	1	2	3	4
c) whether the offender seems likely to commit an offence again.	1	2	3	4
d) whether this particular kind of crime is occurring frequently in the community.	1	2	3	4
e) whether the offender has repaid or in some way made amends to the victim.	1	2	3	4
f) the offender's age.	1	2	3	4
g) the extent of the offender's ties with the community.	1	2	3	4
h) personal circumstances - for example employment and educational history.	1	2	3	4
i) whether the offender saved the cost of a trial by pleading guilty.	1	2	3	4
j) extent of criminal record of the offender.	1	2	3	4
k) the offender's family background.	1	2	3	4
l) if the offender was drunk or high when he or she committed the offence.	1	2	3	4
m) if a weapon was used in the offence.	1	2	3	4
n) the role the accused played in the offence if charged jointly with others.	1	2	3	4
o) the offender's family and responsibilities.	1	2	3	4
p) the mental state of the offender.	1	2	3	4
q) the amount of time spent in jail before sentencing.	1	2	3	4

37. Pick the sentences (1 or more) which you feel is/are the most effective or appropriate for each of the following offences:

OFFENCE	SENTENCE
Break and enter _____	1. Discharge with no conditions
Common assault _____	2. Discharge with conditions
Arson _____	3. Suspended sentence
Murder _____	4. Probation
Impaired driving _____	5. Paying money to the victim
Bribery _____	6. Fine
Sexual assault_____	7. Community work order
Possession of marijauna _____	8. Intermittent sentence (less than 90 days to be served on weekends).
Polluting the environment _____	
Trafficking in heroin _____	9. Prison (less than 2 years)
	10. Prison (2 to 5 years)
	11. Prison (5 to 10 years)
	12. Prison (more than 10 years)

BIOGRAPHICAL SECTION: QUESTIONS ABOUT RESPONDENT

These are general questions about you. Please try to be as accurate as you can.

1. Year of birth is 19 |__|__| I am _ _ years old.

2. Circle the highest level of education which you have completed.

Less Than Grade 10	Less Than Grade 12	High School Graduate	Some College or University	College or University Graduate
1	2	3	4	5

3. Offence(s) for which I am now serving a sentence are:

4. This is my first offence. Yes No

If NO, please answer question 5, then go on to question 6.
If YES, then go on to question 6.

5. Previous offences for which I have been convicted are:
(no more than your last 3)

6. Check the one(s) that apply to you.

I am presently. . .

on remand ___
on probation ___
on provincial parole ___
serving an intermittent sentence ___
serving a provincial jail term ___
serving a federal prison term ___
on mandatory supervision ___
on federal parole ___

7. I have now served ___ years and ___ months.

8. My sentence will be over in ____ years and ____ months.

9. Are you a Native Canadian? Yes No

10. Have you ever applied for parole? Yes No

11. Have you ever been on parole? Yes No

Feel free to express any suggestions you may have in regard to the present system and what you would like to see changed, if anything.

Comments:

If you would like a summary of the results sent to you in September please detach and complete this section.

NAME:

ADDRESS WHERE IT MAY BE SENT:

(YOU MAY MAIL THIS SEPARATELY FROM YOUR COMPLETED QUESTIONNAIRE)

Address: John Anderson or Liz Szockyj
Department of Criminology
Simon Fraser University
Burnaby, B.C.
V5A 1S6

THANK YOU VERY MUCH FOR YOUR TIME AND COOPERATION

APPENDIX C

Questionnaire Response Frequencies

	Strongly Disagree % (#)	Disagree % (#)	No Opinion/ Neutral % (#)	Agree % (#)	Strongly Agree % (#)
1. In your opinion, the reason why offenders are sentenced is to. . .					
a) protect the public.	4(6)	14(22)	14(21)	50(78)	19(29)
b) to punish them for what they have done.	3(5)	9(14)	10(16)	61(95)	17(26)
c) to stop others from committing a similar crime.	6(24)	27(42)	16(24)	33(50)	9(14)
d) to provide opportunities for them to improve themselves (through training or social programs).	42(63)	33(49)	13(19)	11(17)	2(3)
e) to pay society back for the wrong done.	22(34)	40(61)	14(22)	20(30)	5(7)
f) to pay back the victim for the harm done to them.	28(43)	36(55)	13(20)	18(27)	5(8)
2. Rich people receive the same sentences as others for the same offences.	65(104)	21(34)	6(9)	3(4)	6(9)
3. Throughout Canada, similar crimes committed by similar types of persons (similar record, etc.) should get similar sentences regardless of <u>where</u> the person is convicted.	6(9)	11(17)	10(16)	38(61)	36(57)
4. Some judges send people to prison <u>more</u> than other judges.	.6(1)	1(2)	.6(1)	46(76)	52(85)
5. When sentencing, judges take into account time spent in custody during remand.	20(32)	40(64)	19(31)	19(30)	3(5)
6. If a person can afford a good lawyer, their chances of getting a light sentence are better.	3(5)	4(7)	12(19)	37(60)	44(71)
7. Unjust long sentences are pretty rare.	34(56)	42(69)	11(18)	10(16)	3(5)
8. Offenders in the Lower Mainland get the same sentences as offenders in the rest of British Columbia.	20(33)	34(55)	34(55)	11(18)	2(3)

	Strongly Disagree % (#)	Disagree % (#)	No Opinion/ Neutral % (#)	Agree % (#)	Strongly Agree % (#)
9. Unjust short sentences are pretty rare.	11(18)	28(45)	26(42)	29(46)	6(10)
10. Some crimes are so serious that judges should not be allowed to give anything less than a prison term.	6(10)	11(18)	9(15)	49(80)	24(39)
11. The sentence I received was pretty fair.	30(49)	18(30)	13(21)	33(54)	6(10)
12. The accused should be given a lighter sentence because he or she pleads guilty.	7(11)	24(40)	32(52)	26(42)	12(19)
13. It doesn't matter which judge you appear before, they're all the same when it comes to sentencing.	52(85)	38(62)	4(7)	5(8)	.6(1)
14. Parole procedures are really pretty fair.	39(64)	25(41)	20(33)	13(21)	3(4)
15. The same judge may be, in sentencing, tough on some crimes but not so tough on others.	2(3)	2(3)	3(5)	68(111)	26(42)
16. The laws should give more direction to judges on how short or long a prison sentence should be.	7(11)	9(15)	17(27)	46(75)	22(35)
17. Native Indians receive the same sentences as others do for the same crimes.	23(38)	36(58)	24(39)	16(26)	1(2)
18. Offenders should only be sent to prison if they cannot learn from less severe sentences (such as fines, suspended sentences, probation).	4(7)	16(26)	15(24)	46(76)	19(31)
19. To get a lighter sentence, the accused should accept a deal made between the Crown prosecutor and his or her lawyer.	22(35)	22(35)	19(30)	32(51)	6(10)

	Strongly Disagree % (#)	Disagree % (#)	No Opinion/ Neutral % (#)	Agree % (#)	Strongly Agree % (#)
20. In sentencing, the same judge may be hard on some offenders but not so hard on others.	0(0)	1(2)	7(12)	67(109)	25(41)
21. Sentences should be based on consistent national standards with offenders only getting more or less severe sentences in exceptional cases.	3(4)	14(23)	22(35)	47(77)	15(24)
22. Women should receive the same sentences as men for the same offences.	7(11)	20(32)	15(24)	44(72)	15(24)
23. Judges need to be guided by minimum and maximum sentences for each offence.	7(12)	14(22)	23(37)	38(61)	19(30)
24. Every federal inmate may serve the last third of his or her sentence in the community under the supervision of a parole supervisor (mandatory supervision). In your opinion, mandatory supervision should be used for. . .					
a) violent offenders.	15(22)	10(15)	16(24)	38(56)	22(32)
b) sexual offenders.	33(50)	9(13)	9(14)	13(20)	36(54)
c) property offenders.	13(19)	18(27)	23(35)	33(49)	14(21)
d) all offenders.	22(34)	24(37)	30(47)	17(26)	7(11)
25. I would like to see prison sentences. . .					
a) with straight time and temporary absences (no mandatory supervison, no parole).	29(44)	33(50)	14(21)	16(25)	8(12)
b) with only mandatory supervision (no parole).	28(41)	50(73)	15(22)	7(10)	.7(1)
c) with only parole (no mandatory supervision).	19(29)	33(49)	13(20)	27(41)	7(11)
d) with mandatory supervision and an early release through parole (like it is now).	16(24)	22(34)	16(24)	35(53)	11(17)
e) the way it used to be with only parole and time off for good behavior (no mandatory supervision).	4(7)	16(25)	20(32)	32(50)	28(44)

	Strongly Disagree % (#)	Disagree % (#)	No Opinion/ Neutral % (#)	Agree % (#)	Strongly Agree % (#)
26. It is clear to offenders what the parole board expects of them to obtain an early release.	20(33)	25(40)	12(20)	35(56)	8(13)
27. If prison staff are backing an inmate, his or her chances of getting parole are good.	5(8)	22(36)	15(24)	46(75)	12(19)
28. When the parole board attaches special conditions or restrictions on a parolee, they are usually fair.	14(22)	37(59)	24(38)	22(35)	4(7)
29. Reporting to a parole supervisor and obeying the parole rules is better than being in prison.	0(0)	7(11)	15(25)	40(65)	38(61)
30. Laws should be passed to prevent judges from giving too much prison time for some offences.	1(2)	1(2)	10(16)	45(74)	43(70)
31. Mandatory supervision should be used to help those offenders who have been in prison for long periods of time.	11(18)	13(21)	17(27)	44(71)	15(25)
32. It is important that judges tell the offender exactly why he or she is getting a particular sentence.	1(2)	3(5)	7(11)	54(87)	34(55)
33. An inmate and the parole board should work together to establish a clear agreement (a contract) about release conditions.	1(2)	2(3)	9(15)	56(90)	32(51)
34. Police lay too many charges for a single offence.	1(2)	.6(1)	11(17)	38(61)	50(80)

	Not Important % (#)	Somewhat Important % (#)	Important % (#)	Extremely Important % (#)
35. How important is the role of these different parties in the sentencing process. . .				
a) the police.	13(21)	24(38)	29(47)	34(54)
b) the Crown prosecutor.	5(8)	13(21)	29(47)	53(84)
c) the defence counsel.	6(9)	27(43)	27(43)	40(62)
d) the sentencing judge.	1(2)	3(4)	18(28)	78(123)
e) expert witnesses.	11(18)	29(46)	34(53)	26(41)
f) the convicted offender himself or herself.	19(29)	22(35)	23(36)	36(56)
g) the victim.	13(20)	20(32)	36(56)	31(49)

36. How often should the judge take the following factors into account when sentencing an offender?

	Always % (#)	Sometimes % (#)	Never % (#)	Don't know % (#)
a) the extent of harm to victim.	66(105)	29(46)	3(4)	3(5)
b) whether the crime was premeditated (planned).	70(113)	23(37)	3(5)	4(6)
c) whether the offender seems likely to commit an offence again.	54(85)	30(47)	12(19)	5(8)
d) whether this particular kind of crime is occurring frequently in the community.	22(35)	41(66)	30(48)	8(12)
e) whether the offender has repaid or in some way made amends to the victim.	51(81)	41(66)	4(7)	4(6)
f) the offender's age.	49(78)	43(69)	7(11)	1(2)
g) the extent of the offender's ties with the community.	45(71)	39(62)	15(23)	2(3)
h) personal circumstances - for example employment and educational history.	51(82)	39(62)	9(15)	.6(1)
i) whether the offender saved the cost of a trial by pleading guilty.	22(36)	43(69)	27(43)	8(13)
j) extent of criminal record of the offender.	40(64)	37(60)	21(34)	2(3)
k) the offender's family background.	48(77)	35(56)	16(26)	2(3)
l) if the offender was drunk or high when he or she committed the offence.	53(85)	37(59)	8(12)	3(5)
m) if a weapon was used in the offence.	67(108)	29(46)	3(4)	2(3)
n) the role the accused played in the offence if charged jointly with others.	57(92)	37(60)	5(8)	.6(1)
o) the offender's family and responsibilities.	52(84)	34(55)	11(17)	3(5)
p) the mental state of the offender.	76(122)	21(33)	2(3)	2(3)
q) the amount of time spent in jail before sentencing.	74(119)	20(32)	4(6)	3(5)

APPENDIX D

Field Notes

Pre-Test

A pretest was held at the Vancouver Pre-Trial Services Centre (VPSC) on June 26, 1985 between 1830 and 2000 hrs. The center holds a representative population of all types of offenders and seemed ideal for testing our questionnaire. There were no major problems with the instrument itself but we learned much about the population we were to survey in this study.

On the first of four nights that we went to VPSC, we solicited prisoners by random, asking them if they would be interested in participating in a study that may have some impact on sentencing law in Canada. When we came back the second night to interview this group, only seven of 11 prisoners who initially agreed to participate in the study showed up and only three remained through the whole pre-test. The next time we used a slightly different method; the exception being the time period between when we asked them to participate and when we actually met with them (only about one hour). The decay of numbers on the first try may have been due to an apprehension that prisoners may have in showing others the limits of their education and

understanding of prison issues. There is also the danger of having so much time between the initial agreement to be involved in a study like this, and doing it, because people have time to think, discuss it with peers and change their minds.

We introduced ourselves as researchers from Simon Fraser University, doing a study for the Canadian Sentencing Commission (CSC), and expressed interest in their opinions and feelings about some proposed changes to sentencing laws. Generally, we were not more specific than that. The prisoners had little trouble articulating the types of problems they saw in the criminal justice system and at times it was difficult to keep the group on track. Each prisoner had his own particular story to tell about the disparities and unfairness in the system. In fact, some were openly hostile over certain issues. Some of their concerns (to do with sentencing) include:

1. The level of the court where their case is being heard. Two felt that the formality was greater and plea-bargaining was a less conspicuous feature at the higher level of court. The same two agreed that there should be an option to proceed to a higher court, especially for serious types of crimes.
2. When asked about the process of overcharging by police, there was a consistent level of agreement that overcharging is a fact of the criminal justice system (CJS) and that it was a tool the police and prosecutor used to manipulate the accused into pleading guilty in exchange for reduced charges.

3. Many thought it was unfair that time spent in remand (custody) was rarely considered in sentencing. One suggested that the time spent in remand should be 'automatically' deducted from whatever time the judge gave the offender.
4. Several offenders also mentioned that the time spent waiting for sentence appeals was too long. There were several examples cited where the offender had already served his sentence by the time that the final reduction in prison time came through.
5. Asked what they thought were the roots of inequality in sentencing practice, there was a general consensus that the different attitudes or personalities of judges was the primary source of sentencing disparity.

All of the groups we spoke to were cooperative and seemed interested in the goals of the study.

Creative Community Services - New Westminster Office - Probation

Individuals on probation were sampled in a non-random fashion from a privately run service on August 27,28 and 30. The service catered to offenders who had received a community work order in conjunction with their probation order, therefore the sample consisted of this select group of probationers. Participation was very difficult to solicit since these individuals were more interested in spending any spare time they had trying to complete their work orders. The probationers were approached in the office lobby, while awaiting their assignment for the day. Since interviews took place before they left for their work detail, time was often quite limited. A total of 10 people filled out the questionnaire and nine people stayed for the interview.

Some of their thoughts on the issues raised in the interview are as follows:

1. Disparity showed itself in many forms:
    a. socio-economic: Wealthy individuals are treated more leniently by the courts. For example, Hatfield's charges were thrown out and Mick Jagger has been "charged more times than me but he still walks" due to fame and money.

        The quality of the lawyer and legal representation at all

is dependent on socio-economic status. A "bum" who is not guilty may be convicted due to a lack of a defence lawyer, whereas the rich can afford the best and most influential lawyers.

b. geographical: Differences in sentencing outcomes were noted across provinces and cities.

c. types of crime: Some crimes, on the average, receive a much lighter or harsher sentence than they should. For example, sex offenders are treated too leniently. "In a lot of cases a male judge has no conception of what rape is" and, therefore, cannot sympathize with the victim. They indicated that the sentence should be similar to that given for murder.

d. sex of offender: It was stated that women receive the same, or less time than men. However, most felt they should be treated equally.

e. age: Juveniles should receive the same sentences as adults for if they are "old enough to go out and get into trouble, they are old enough to pay".

2. Guidelines should be employed so that judges "don't give too little or too much". More realistic maximum sentences need to be introduced. Restrictions on sentencing should be used for some crimes e.g., impaired driving, assault, break and enter, and drug related crimes (maximum sentences for different amounts of drugs should be devised). Although almost everyone

was in favour of guidelines, this did not undermine the need they expressed for individual circumstances to be considered.

3. They suggested various improvements to current practice.
   a. Appeal procedures should be quicker.
   b. Pre-sentence reports should be mandatory to shed light on the background of the accused; "you shouldn't just be a number".
   c. Juvenile records should not be brought up in court.
   d. Institutions should be held accountable for what occurs within their walls (e.g., a case of drug testing on offenders [ridolin] was cited).
   e. Psychiatric help should be made available to those who need the service.
4. Plea-bargaining was viewed as "part of the game". Occasionally, it is beneficial in terms of decreased sentence and saves the ordeal of going "to court over something you might lose". However, usually the accused does not end up with a deal. The fact remains that "if you do the crime, you're going to do the time".
5. They held a very negative opinion of the police. In addition to examples of police brutality and overcharging, the probationers stated that they "lie through their teeth" and "back each other up in court". If they are suspected of perjury, instead of being sentenced to jail like everyone else, they are "suspended and their badge taken away".

6. Parole and mandatory supervision should be used more cautiously. Violent offenders released on parole, or mandatory supervision, should be screened on factors related to premeditation and the circumstances of the crime. Furthermore, rapists should be psychologically tested to ensure that they will not repeat the offence once released. "If you let the person out then you should be able to trust them". In general, parole is seen as a positive opportunity for prisoners. However, more effort should be made to provide guidance and assistance in finding employment.
7. They commented on most of the purposes for sentencing with the majority expressing the opinion that punishment is the most appropriate justification. A number of people felt that a jail sentence should be used only as a means to protect the public rather than a method of "getting people off the street". Deterrence as a sentencing purpose may be applicable to young offenders, but it usually just serves to make the offender more vindictive. Restitution to the victim was viewed as a sentence that should be used more frequently. The victim is often neglected by the system, or even punished as in a case cited of a rape victim who was incarcerated for refusing to testify. Fines were viewed as inappropriate in some cases. "If a guy's a known criminal and doesn't have a job why do they give him a fine - he'll probably go out and steal it". Prison was viewed as a "school of crime" rather

than as an opportunity for self-improvement. It has a bad influence on young people for "if it's there, it's going to affect you in some way. You have to act like them".

8. Probation as a sentencing alternative was commented upon extensively. Probation officers, for the most part, care for their clients, but they should do more counselling and be "more clued in". For some people, there should be more contact with the probation officer which necessitates hiring more officers. For those working, accommodation should be made to ensure that reporting does not interfere with their job. With regards to hiring, it was proposed that ex-prison guards should not be employed as probation officers.
9. Community service orders provide a sense of importance because the offenders are helping the community. The only problem was that the time given to complete the required number of hours was often too short. Also it was suggested that people should have the same time to pay a fine as they are given to complete a work order, if both sentences are imposed.

Allouette River Correctional Centre

The Allouette River Correctional Centre is a minimum security provincial facility about 50 kilometers from Vancouver. The administration felt that our best forum for addressing inmates regarding sentencing issues would be through their alcohol awareness program. The director indicated that this would cause the least amount of disruption to the routine of the complex and he also thought that our sample would be fairly representative. We spoke to about 18 prisoners and 12 filled out a questionnaire and participated later in an open discussion. We recorded what we believe were the salient issues for this population:

1. Sentences for impaired drivers were on the increase in terms of time given and the number of people processed.
2. The public was largely responsible for the severity of the sentences given out; judges were reacting to pressure from lobby groups and media campaigns. There was a general consensus that the problems of impaired driving were real and that public involvement was justified. Some attributed the increase in alcohol-related crimes to an overall increase in leisure time, money and a lower drinking age.
3. Many felt that there was widespread disparity in sentencing because some offenders perceived to be more dangerous (e.g.,

sex offenders) were given probation, fines or lenient jail terms.

4. Judges are different in their perceptions of the harm generated by impaired drivers. One can mitigate the impact of the sentence by "judge shopping"; a good lawyer knows when to schedule a client before a judge who is lenient on impaired driving.
5. Sentences for impaired driving are generally fair. However, the amount of money one has to spend on a lawyer affects the sentencing outcome. Legal aid lawyers are not perceived to spend the amount of time necessary to secure a "not guilty" finding or accomplish some way of getting a lighter sentence for the accused. A lawyer who is not well-established may also not have the kind of rapport with the prosecutor or judge deemed essential to mitigate sentence severity.
6. There was no consensus about the relative advantages of determinate over discretionary sentencing practices. Some felt that legislated penalties would tell potential or actual offenders "for sure what they're going to get". Restricting judicial discretion was thought by some members of the group to be disadvantageous to the offender; each case is unique and should be decided on its own merits. Minimum penalties were viewed as desireable because it would prevent some people from benefitting from their wealth or community ties.
7. When asked about controlling plea-bargaining through law,

most responded that plea-bargaining was an integral part of the criminal justice system. Some also felt that the judge should be able to hear all the negotiations that take place between Crown counsel and the defence.

8. Police "overcharging" was a reality of the criminal justice system. There was division over the relative merits of this practice; some said that it was a way for the offender to get a good deal if he was caught red-handed in the offence, others thought that the laws were written in such a way to provide police with the leverage to secure a conviction. (One offender cited the dual charges laid in a theft case: theft and possession of stolen property. Police offer to drop one in exchange for a guilty plea on the other.)
9. When queried about the purposes for sentencing, we found that most offenders cited "punishment" as the real intention of the court. All the offenders we were speaking with were part of a compulsory alcohol awareness program imposed by the court. Many said that if the program were entirely voluntary, they would not be in it. Rehabilitation was not possible in a prison because many of the guards treated them like they were less than human.
10. The provincial Parole Board is staffed by two members of Mothers Against Drunk Drivers (MADD) and this presence severely hampers the possibility of early release.
11. Early releases for short-term sentences were impeded by the length of time it took to process the applications.

12. If police were involved in crime or homicide incidents, they had a much better chance of never being charged or receiving very light sentences.

Lower Mainland Regional Correctional Centre - Main Jail

We received assistance from the Educational Coordinator at the Lower Mainland Regional Correctional Centre (Oakalla) and used her classroom as a forum for giving an overview of the research project to a small group of inmates. It was expained to us by the Educational Coordinator that this was the usual and preferred way of approaching the inmate population to introduce research. Our hope was that there would be enough enthusiasm generated for this group to encourage others to put their names on a "sign-up sheet" which would later be used to randomly select volunteers for our study. When we spoke to this group of nine prisoners, we were received somewhat skeptically, although at least two prisoners agreed that some research was necessary to help alleviate disparities in sentencing practice. We tried to be sensitive to the dynamics of subcultural prison values by ensuring the volunteers that they were free to withdraw at any time, participation was strictly voluntary and confidentiality would be ensured.

The next day we were informed by the Educational Coordinator that the prisoners in the Main Jail were "not interested" in participating in the Canadian Sentencing Commission - Offender Survey. She cited the following reasons:

1. a particular group of prisoners in the Main Jail at that time was generally negative and apathetic towards reform-oriented research;
2. earlier research that had been done on the same premises with assurances of confidentiality were not kept;
3. one researcher was identified as a former correctional officer at a pre-trial center, "once a bull, always a bull"; and
4. perhaps most importantly, one prisoner stated to us, "I don't know... sentencing is a pretty sensitive issue...I'm not sure too many guys on the tiers want to talk about it...".

We were encouraged by the Educational Coordinator to "try again in the fall" once some of the more negatively influential prisoners had been released or transferred to other prisons. It was apparent that our research strategy, at this point, seemed somewhat inappropriate for the issue we were studying and the population we wished to survey. The approach we viewed as being most desireable, based on the experience of other researchers and the earlier pre-test of our questionnaire include:

1. randomized selection of inmates;
2. a personal invitation to reflect their opinions <u>in private</u> with a researcher; and
3. a structured interview format that would include all of the questionnaire items but flexible enough to reach those inmates with a limited education or comprehension of sentencing issues.

Following the advise of the Educational Coordinator, a meeting was arranged with the Director of the West Wing (Oakalla, Main Jail) on September 3, 1985. The Director supplied us with an ABC list (inmates listed in alphabetic order). Participants were randomly selected by the last digit. From the 32 names originally selected we individually invited 15 inmates to attend a group discussion scheduled later that day. The remainder of those randomly chosen were either in court, transferred, or in hospital. We felt that the individual invitations beforehand would dispell any misconceptions about the study and, thereby, ensure some participation in the group interview. Misconceptions about the study were reflected by the comments of the staff, who referred to us as "students" working on a school project. Once the nature and purpose of the study was explained to each inmate individually, we obtained assurance from 15 of them that they would participate in the evening interview.

From the 15 who said they would participate, 11 showed up at the evening interview. One refused to fill in the questionnaire but sat back to observe. Much of the discussion of the group centered on mandatory supervision and parole.

1. There was general agreement in the group that mandatory supervision should be abolished except for sex offenders and violent offenders. Mandatory supervision was seen as unfair because one third of an individual's sentence is supposed to be earned remission for good behaviour but the supervision

infringes on the freedom the individual has earned. Therefore, the consensus was that the old system of earned remission should be brought back.

2. Parole itself was seen as self-defeating in that the restrictions placed on a parolee inhibit his chances of succeeding. Concern was expressed about the inmate's inability to make any kind of plans for his parole with the inhibitive restrictions placed upon him by the Parole Board.
3. The whole group felt that the institution has too much say in the decision-making of the Parole Board. It was stated that there was not enough cooperation between inmates and staff in parole issues; that too often an individual's "negative attitude" is a sole reason for denying him parole. In this regard, one inmate said that since prison is such a negative place, the inmate is bound to have a negative, even bitter attitude.
4. The relationship between a parole officer and his client was seen more as a punishment than supervision. Positive or constructive supervision is lacking as parole officers seem more concerned with enforcing restrictions.
5. The group agreed that Parole Board members should be representatives of the community, including ex-cons who are aware of the problems facing parolees. They did not feel that any kind of training was required for Parole Board members, but that they should be changed every 90 days. It was also

stated that more accountability to the courts would improve the Parole Board and its practices.

6. The group felt that there is a need for more opportunities for inmates to be in the community, such as halfway houses, day paroles and other non-institutional alternatives. It was stressed that everyone needs such an opportunity early in their sentence, but only one if they are not successful.
7. With regard to inequality in sentencing and its causes, the group agreed that the history of the offender plays too large a role in sentencing, that an individual's wealth or capacity to afford a good lawyer is very important for the result of a trial, particularly since a good lawyer can achieve a change of venue, or obtain a different judge.
8. The group was divided on whether the judge's personality has an effect on the sentence. They felt that disparity between localities or in different geographical areas was logical since small communities are normally more conservative than larger ones.
9. The group was in agreement that the police lack accountability and that they have too much influence with judges, who, for example, will deny an individual bail on the request of the police. It was stated that the Crown deceives the judge regarding a person's past record, by including past charges but not the outcome of those charges. Therefore, the judge should have the full record before him/her.

10. There was consensus in the group regarding sentencing guidelines. The group felt that judges need stricter guidelines to alleviate sentencing inequality by limiting discretion.

11. With regard to the purposes of sentencing, there was a great deal of discussion in the group. Several in the group felt that while a prison sentence may be a punishment initially, eventually it becomes "home". There was general agreement that prison should be rehabilitative but it is not now. For lesser offences there should be restitution programs. One suggestion was that 50% of an inmate's wages should be given to the victim and the other 50% should be kept for the inmate on his release. The group expressed the need for much more community programs since prison only serves to make criminals more criminal.

12. The group felt that sex offenders should receive determinant sentences because it is too easy for most of them to get out early or get off lightly. The main problem emphasized by this group was the fact that the offender faces a judge rather than victim, or the person hurt. A more effective method would be for the offender and victim to meet and arrange restitution.

13. The issues of police overcharging and plea-bargaining were combined at the end of the discussion. The group was cynical about police overcharging, commenting that, "if they can't

get you on one charge, they can always get you on another". Plea-bargaining was seen as a negative thing. "There are just too many deals going on which make the lawyers fat". The very least that should be done is to bring plea bargaining into the open with the judge taking an active role.

Toward the end of the interview we asked for their general suggestions regarding what they felt needed changing the most. They suggested that a few drugs should be legalized. Most crimes are drug related and if the government gave legal access to drugs the prison population would be cut in half. Another suggestion was that a justice of the peace should be available in prisons.

Lower Mainland Regional Correctional Centre - Westgate B

Westgate B is the wing at the Lower Mainland Correctional Centre (Oakalla) that holds an average daily count of 90 sentenced inmates. We spoke to nine inmates on July 16, 1985 after having obtained permission from the Educational Coordinator to use her classroom as a forum for presenting our study to the prisoners. One particular inmate from those we initially approached was interested in acting as our liaison and offered to distribute "sign-up" sheets to the various tiers. We had hoped that we would have enough prisoners interested in participating in the study so that we could randomly select individuals from these lists. However, due to a breakdown in communication these "sign-up" sheets never reached the general population of Westgate B. Instead, we spoke to nine members of our liaison's peer group who generally all came from the same tier.

Some of the concerns that this group enunciated are outlined below:

1. Correctional authorities do not always follow the recommendations of the sentencing judge. For example, a judge may say an inmate should go to the Allouette River Unit (ARU) for treatment purposes, but the correctional people will not assist in following this recommendation.
2. There is no effort to rehabilitate the inmates. They would

like to see more courses being offered (such as in Alberta) to include such things as computer training, trades and masonry. Farming was also brought up as a method for the prison to become more self-sufficient (by growing their own food) and also benefit the community (by selling the surplus).

3. The correctional officers are viewed as having a punitive and degrading perspective of prisoners. Some felt that this was one of the greatest impediments to personal reform. They suggested that staff attitudes should be improved through an increased educational standard which may partially alleviate this problem.
4. The role that the police play in sentencing was emphasized. They affect who gets sentenced through their discretionary practices. It was perceived that the police influence all aspects of the sentencing process from arrest to parole.
5. Disparity in sentencing is dependent upon the people working in the criminal justice system. The attitudes of the judge, prosecutor and the police have an effect on the selection and prosecution of offenders. An example to illustrate this point was articulated by an inmate who stated that a "judge's son was killed by impaired driving so he hangs anyone who commits an impaired". Sentences resulting from subjective atttitudes lead to inequality which should be controlled. It was suggested that this judge should not preside over cases of

this nature if he cannot be impartial.

6. They perceived that judges and prosecutors socialize together and these informal relationships affect sentencing outcomes.
7. Other sources of disparity include economic and geographical differences between offenders. Those accused persons who cannot afford a good defense lawyer have to rely on legal aid lawyers; the latter are not seen as performing their duties as well as the former. Legal aid lawyers are not remunerated sufficiently for their efforts and may be under some pressure to take on cases.

   Geographical disparity occurred throughout Canada; there were several examples cited where persons outside the Lower Mainland received harsher sentences than those within the more populated regions.
8. It was proposed that a person's position in society affects the perception of "wrong" and the sanction applied. The police were brought up as an illustration of this point. It was felt that police could commit similar offences to those who were in prison, for example homicide, and not be dealt with in the same manner as "criminals".
9. The inmates agreed with minimum and maximum sentences and the development of some standards to restrict judges' sentencing options. Many felt that it is necessary for the judge to exercise his own discretion to take in the wide range of cases that come before him.

10. A final point was made that Canada should examine the sentencing practices of Sweden for an example of an effectively run system.

Vancouver Island Regional Correctional Centre

The Vancouver Island Regional Correctional Centre (VIRCC) is a provincial correctional facility located on the outskirts of Victoria. It holds 128 inmates, 87 of whom have already been sentenced. We went there on August 13 to select our sample from the ABC list provided us by the institution's records staff. Using the last digit in the Correctional Service Numbers we randomly selected 45 names from the sentenced population. We were concerned about obtaining a sizeable sample and had discussed the possibility of speaking to some of these inmates before the interviews to solicit their cooperation. We decided, however, that this task was best left to a staff member for two reasons: one, we felt our extended presence and movement in the institution may put too great a strain on the patience of the staff; two, we felt that the inmates would respond to an informal approach more readily than to a formal explanation of the study's purpose.

We turned our list over to a staff member who approached inmates selected. This was a problem in our minds for two reasons: one, we were aware that the randomness of our sample would be compromised by the selectivity of the staff; and two, we felt that the inmates would feel that their participation in the study was more or less compulsory if approached by a staff

member. Regarding the first problem, we resolved that we would require a certain selectivity on the part of staff anyway in order that security would not be undermined; for example, we could not group protective custody inmates with those from any other unit. Furthermore, there were some names on our list that staff identified as potentially disruptive to our interviews. The staff member, therefore, selected 25 names from our random list and arranged three meetings for the following day. As to our second concern regarding the voluntary participation of the inmates, the staff member assured us that he informed them that their participation was not compulsory, and we, in turn, assured them in our introductions that they should feel free to leave at any time. Moreover, judging from the groups' responsiveness, we felt that the inmates were genuinely interested in expressing their concerns.

Of the 25 inmates the staff member talked to, 23 participated in the study; nine in the first group and seven in both of the other groups. Of those who filled out the questionnaire, eight of the first group remained to take part in discussion and five remained from the second group. All of the seven in the third group remained for discussion. The responses differed significantly in some instances between groups, while in others they were all in accord. Only with the second group was it difficult to guide the discussion as one member of the group was particularly dominant. For the most part, however, we were able

to solicit the views of everyone present or at least to ascertain their agreement or disagreement with the opinions being voiced.

1. With reference to the first question in the questionnaire regarding the purposes of sentencing, we received varied responses depending upon how the question was interpreted. In other words, we obtained their opinions on what they felt the system was accomplishing and what they felt it should be purposed to do. There was general concurrence that sentencing, prison sentences in particular, did not protect the public, mainly because too many people are not caught and sentenced. Moreover, they expressed the view that protection of the public through imprisonment was only a valid reason for certain offenders, which they identified as those committing crimes against the person and most particularly sex offenders. It was expressed in one of the groups that the majority of people in jail (the figure used was 70%) are not a threat to public safety.
2. There was general agreement in all groups that imprisonment is a form of warehousing and that more work and rehabilitation opportunities were needed inside so that people are not worse off when they are released than when they went in. Drug addicts were said to need more rehabilitative treatment of a medical nature. One individual suggested that many of the security staff have special skills

and talents that could be taught to the inmates (he gave the example of one staff member whose job was strictly security-oriented but who is a licensed landscaper. This is the kind of skill that could be useful to inmates).

3. All three groups were generally ambivalent about paying victims back for the harm done to them. Most agreed that restitution should be a major purpose in sentencing depending on the crime and that paying the victim back did not require imprisonment in most cases. They felt that there should be a greater emphasis on community restitution programs. There was some concern raised about "beefed up" restitution demands for property damage and the view was expressed that when restitution is made, a prison sentence should not be added.
4. There was general agreement among the groups that sentencing does not deter people from committing further crimes or others from committing the same crime. In one group the view was expressed that sex offenders may be deterred if inmate justice was carried out but that these offenders get the best treatment now and are paroled sooner. The system, one stated, conveys the attitude that "you can rape my family, but don't steal my money". Referring to a case involving a local politician and community leader, some of the group felt that for him to be treated so lightly was only "encouraging crime in the important classes".
5. Inequality in sentencing stems from judge's prejudice and the

inability of most offenders to obtain a good lawyer to "judge shop" for them. Most offenders get "dump truck" lawyers from legal aid who more often than not require coaching from the offender himself. The majority of the first two groups felt that judges should look closer at an individual's circumstances before sentencing, while all of the last group agreed that inequality in sentencing would be eliminated if judge's looked only at the offence. There was general overall agreement that judges needed stricter guidelines to limit their discretion. It was recommended and agreed to by most that maximum sentences should be narrowed with different levels of severity for the offence laid out for the judges. The view was expressed that an offender should know at sentencing how much time he would actually serve, this leading to a discussion of police overcharging.

6. Concern was expressed in the last group about the police having up to six months on provincial charges and up to two years on federal charges to actually lay the charge so that an inmate can find, upon release from prison, that there are more charges pending against him. If there are any outstanding charges, the offender should be informed of them prior to release from jail. A great deal of comment was generated in the second group with regard to police charging and investigative practices. It was suggested that if the police made consistent charges and reduced overcharging, the

amount of plea-bargaining would be reduced and there would be less back-up or overload in the courts. They felt that the entrapment defense should be re-enacted because the police spend too much of the taxpayers money "setting-up" crimes in order to make a bust, and their expense accounts are not available for public scrutiny. Generally, police were felt to have too much power and should be more accountable to the courts. Others felt that the police overcharge in order to prevent people from getting bail.

7. In both the first and last groups it was generally felt that plea-bargaining should be brought into the open with judges playing an active role in the process. The second group was divided on the issue, some feeling that the way it is now is alright as long as it works out in your favour. In other words, it would not make any difference in the results if it was brought into the open. Generally, the value of plea-bargaining depends on the kind of lawyer you can obtain.

8. Issues surrounding parole generated a great deal of discussion in all three groups. All three groups felt that the Parole Board should be more professional rather than randomly selected "community members". The point was raised that if Parole Boards are going to be like juries, (i.e., a panel of peers) then there should be a screening process much like in jury selection. (This was in response to the example given of members of MADD being members of the Parole Board).

9. The role of institutional staff in parole decision-making received varied responses from all groups. The first group felt that staff should have more input into parole decisions, that now they only provide the minimum input of the "oh, he's alright" variety. Living-unit officers should be providing more details on the inmate's performance and attitude inside the institution. This group also felt that the Parole Board places too much emphasis on past offences and not enough on the economic conditions and prospects of the inmate. The second group was in general accord with the latter view and also expressed the opinion that the Parole Board should be more accountable to the courts and the community. Unlike the first group, this group felt that the institution should have less say in parole decisions because the staff usually stresses the negative characteristics of an individual and builds a case against granting him parole. The Parole Board relies too heavily on the reports of criminal justice personnel as it is, and not enough on the personal references of the offender.

10. All the groups felt that the Parole Board has too much power and should be more accountable to the courts, who cannot infringe on the rights of the individual to the extent that a parole officer can with special conditions such as not associating with certain people. It was also suggested that the judge's reason for sentencing should be taken into

consideration at the parole hearing to determine if its intent has been fulfilled and whether any special restrictions are necessary.

11. The use of mandatory supervison also received varying replies from the three groups. The first group felt that mandatory supervision should be used only for violent offenders, sex offenders and some property offenders. The second group felt that mandatory supervision should be used for all but sex offenders, who should not be let out early at all. All of the third group felt that there should only be earned remission with no mandatory supervision, the view being that once they are released they do not want someone watching over them at all times. One mentioned that parole could be a good thing if it were improved upon, but that mandatory supervision was forced upon one. If a person is to be released on parole or remission, the decision should be based upon his "current abilities", i.e., employment or outside prospects.

12. In each group we asked for their suggestions on what they would most like to see changed. These included the need for more community facilities and programs as alternatives to imprisonment, the need for younger judges and more accountability in the courts. Sentencing should take into account, to a greater extent, individual circumstances and there should be more opportunity in prisons for inmates to improve themselves and to enable them to support themselves

when they are released. Also, the fact that prison leaves many people stranded when they are released should be a factor in the sentencing of repeat offenders. It was also suggested that drug addicts should have separate facilities where they could receive medical help and that drug offenders should not be given so much time, when compared to sex offenders. Also, sentencing should be standardized and individuals with 25-year minimum sentences should be given the choice of either a 25-year sentence or death by lethal injection.

Lakeside Correctional Centre

Lakeside is on the grounds of the Lower Mainland Regional Correctional Centre (LMRCC) and houses women serving both federal and provincial terms of incarceration. The study was conducted at Lakeside from July 16 to July 18.

We were given a list of 58 names and randomly chose individuals by using the last digit of their Correctional Service Numbers. On the first day, we spoke to a group of seven women but out of this sample two were not fluent enough in English to understand the purposes of our study. Later it became more difficult to speak to inmates in a group setting because many of the them were indisposed through work, court appearances, sleeping or suntanning. We compensated for this problem by randomly selecting more people from our original list. As a result approximately 70% of the females in the institution were selected for group interviews. There were also a number of occasions where females volunteered to participate who were not on the list. These people were genuinely interested in the study and we saw no reason why they should be excluded. Over the three day time period, 20 women filled out the questionnaire and 14 expressed their views in an interview.

Participation was solicited in various ways depending on the correctional officer on duty. In some instances the staff asked

the inmates on the list, at other times an inmate would do this for us, and a few times we were able to ask the inmates ourselves.

The groups we interviewed expressed fairly similar views on most of the issues raised:

1. They believed the reason for sentencing is to deter, protect and/or punish. An additional reason for sentencing was "to get us off the streets"; as a grudge/prejudice. Such jail sentences are viewed as a method to clean up the streets by bringing people in "for any bogus charges". It was hypothesized that this reasoning would cause an increase in the jailed population during the period of Expo '86.
2. Punishment and the protection of society were the most common responses to what the inmates felt the reasons for sentencing should be. The idea of rehabilitation was thought to be "a joke"; prison offered no opportunities for improvement. It was stated that the only opportunity that Lakeside provided was to learn more about crime. The prison was viewed as a "university of crime". In order for programs to be developed it was expressed that the administration would have to change their attitudes toward rehabilitation.
3. Some suggestions volunteered by the women included more half-way houses, forestry camps (similar to what the men have), a women's penitentiary in B.C., a separate remand centre, more education programs, raise in wages, a methodone

program, and work programs or workshops where they can be trained as mechanics or electricians.

4. Disparity in sentencing occurs frequently and takes on many forms in their minds.
   a. The individual differences of judges and lawyers was a prominent source of disparite sentencing. Some have "old-fashioned" attitudes, others are prejudiced and one individual even commented "I've seen judges fall asleep". An example was given of a judge whose daughter overdosed on drugs and it was their consensus that this judge "shouldn't be allowed to handle heroin cases".
   b. Some crimes were perceived as being treated too harshly or too leniently by the courts. Offences related to drugs were usually cited as examples of crimes that fall prey to unduly stiff penalties whereas sentences for sex offenders fell on the opposite end of the severity continuum.
   c. Sentencing disparity by reason of city size was also identified. Sentencing in small towns (e.g., on Vancouver Island) was unanimously thought to be harsher.
   d. Rich people were seen as receiving lighter sentences because "money always talks".
   e. There were mixed opinions on the sentencing of women compared to men. A few felt it was harsher for women because women criminals are a minority, while others

considered it to be the same or more lenient. One group also indicated that publicity causes differences in sentencing.

5. When we inquired about their attitude regarding mandatory supervision the majority viewed it unfavourably. The restrictions were so all-encompassing that "they can bring you back on anything". Although most preferred to have just earned remission with no supervision, a couple of women indicated that mandatory supervision could be selectively applied to certain violent offenders. Half-way houses were deemed to be helpful, if needed, but should be voluntarily sought.

6. Parole seemed to evoke both good and bad reactions. A person could be returned on mere suspicion of violating any of the numerous restrictions and, in some cases, it could increase the length the sentence. Conditions associated with employment often made it difficult to see a parole supervisor. One individual referred to an inability on the part of parole supervisors to do anything for parolees.

7. The minimum and maximum penalties now embodied in the Criminal Code were seen as being too broad. Some thought minimum sentences for some crimes were appropriate (e.g., drunk driving, sex offences), but it was generally felt that judges should be allowed the discretion to take into consideration the individual circumstances of each case. Most

wanted the range of penalties narrowed or guidelines applied to judicial sentencing because it was felt that there was "too much power given to one individual". One group said that they wanted to know the penalties for the crime in advance. They proposed that different charges be laid to account for different circumstances and in this way sentences could be consistent for similar charges.

8. Attitudes toward plea-bargaining varied. Some thought they were "taken for a ride" while others were pleased with the process. A guilty plea could be entered for charges of which the accused is not aware. Sometimes these are not laid at once but are staggered over time. An example was given where a women who served her sentence at Lakeside was arrested, upon release, at the gatehouse on new charges.

   In regard to plea-bargaining issues, overcharging was cited to be a common practice. Some women talked about the uncertainty of not knowing whether they would have "gotten off" if they went to trial. It was mentioned that innocent women are the ones hurt by this process. The accused's participation in the negotiations is minimal and it was felt that she/he should be present when the lawyers discuss it so that they know exactly what kind of a deal is made.

   Plea bargaining is beneficial for those that are wealthy and for those who are guilty. The former are sentenced right away with little "dead time" served. The expediancy of the process

and the perceived leniency in sentencing were the advantages that some of the women appreciated. However, even the women who favoured plea-bargaining expressed a need for guidelines to ensure that any negotiations would be carried through as agreed.

9. Lengthy imprisonment terms were not advocated, or as one woman said, "Long, long sentences won't do any good to an individual". Life sentences should be abolished. Mass murderers, who would be given such sentences, are insane and should be in Riverview (an institution for the mentally handicapped), not jail. It was proposed that if after five years of a prison term the person has improved, she/he should be given the opportunity to demonstrate this.

10. Other more personalized remarks were:

    a. bail supervisors, who know how the accused has performed while on bail, should have input into sentencing;

    b. whether the person felt remorse should not be ascertained by the judge who is not an expert in psychology nor is privy to the internal thoughts of the offender;

    c. police officers have too much to say when it comes to sentencing;

    d. twenty-four hours should pass before giving statements to the police in order to ensure that the person is composed and not emotionally distressed at the time;

    e. there should be lawyers, judges and other members of the

criminal justice system who know what it is like in prison; and

f. other offences for which a person is accused should not be brought up during the sentencing process.

Matsqui Institution

Matsqui is a federal prison located about 30 miles east of Vancouver in Abbotsford. We initially spoke to members of the Inmate Committee (on the recommendation of the institutional psychiatrist). At this time we explained the nature of the study to them and inquired as to the best way to approach other inmates. We had been given a list of all the prisoners and we randomly selected individuals by their Federal Penitentiary Service Numbers. Two inmates offered to ask the people identified by our random list. The list was returned at the lifer's meeting which we attended a few days later (see following section). However, the response was not what was anticipated. A number of people could not be located (were in protective custody, on parole, or in segregation) and many were not interested in participating. Therefore, we randomly selected some additional names and confirmation of those willing to take part was given to us on our next visit.

The following Monday we intended to interview the prisoners on our first random list and some volunteers who had indicated an interest. Problems with the need for advanced notices for passes arose and, as a result, our contact within the institution phoned around the institution in an effort to locate the inmates requested. Consequently, we only interviewed one group of six

inmates that afternoon. The time frame we had to work within was limited due to the availability of the boardroom and the times when inmate counts were taken.

The group size ranged from three to six prisoners with a total of 18 prisoners completing the questionnaire and 17 remaining for the interview.

Several issues were raised in regard to parole:

1. It was felt that the Parole Board has arbitrary control over people's lives. Many believed that the absolute power given to the Board had "corrupted" the members; instances were cited where we were told of their "power trips" and "manipulation". It was felt that the Board does not function logically or follows its own guidelines. Parole officers were accused of playing "power games" due to a lack of trust in the professional relationship. The prisoners saw themselves as not being treated as humans for "anyone empathetic with inmates is shunned off".
2. All groups suggested a change in the composition of the Parole Board. Some indicated that the Board should be composed of peers from the community (similar to a jury), a few thought the Board should be elected, and others pointed to a need for professionalism. Presently, it is felt that the members of the Board have no qualifications or experience for the position.
3. There should be explicit criteria for parole eligibility and

not left to the "whim" of the Board members. They are responsive to the public and media; vacillating to accommodate these groups produced inconsistency in decision-making. They base their decision on a prisoner's attitude which may not be the same when he/she is released. The first offender may have a better chance at making parole but it was perceived that many others are being denied parole because of their previous record. Similarly, those maintaining their innocence are unlikely to receive parole. If the classification of an inmate is changed then it is more difficult to obtain parole because the prisoner has not been in that particular institution long enough. Sole responsibility should not be given to the Parole Board to make decisions regarding a person's life in the form of granting and revoking parole.

4. The stigma attached to an individual on parole is counter-productive. The police were seen as reacting to stereotypes of convicts when parolees showed their identity cards to police. Many believed that the mere suspicion of doing anything illegal would be grounds enough for parole revocation.
5. Restrictions on parole should be limited. The perception was that the Board loads everything onto the parole restrictions that they can get away with. For example, there are restrictions on alcohol consumption even if the individual

does not have an alcohol problem. Normal freedoms taken away from the parolee make it difficult to reintegrate into society. One individual commented, "We can't function half in the system and half out". Parole is an extension of the prison with rules and regulations, or as another inmate put it, "We do every day of our time".

6. While most prisoners approved of parole, a few saw it as a failure in its present form and expressed a need to abolish it. These individuals felt that initially parole had been "much straighter" and no "games" were played, now it causes problems and anxiety, producing a "mental prison out there". As one inmate put it, "In order to get out they're [prisoners] going before the Parole Board and become compulsive liars". They have to "play the game and go with the flow" for the Board was not seen as wanting to hear the truth.
7. They wished to emphasize the fact that those in prison need help and support structures to reintegrate them into the community rather than making them bitter. If used properly, parole can be a really constructive tool that fosters trust rather than paranoia. In their opinion, there needs to be more than just the <u>appearance</u> of justice.

Mandatory supervision received many of the same critisms as parole but was viewed much more negatively.

1. One group mentioned that many people were not applying for

parole because of the games involved and as a result MS was introduced as a means to gain control over these prisoners. They expressed a wish to see it eliminated for the idea of remission is a "farce". They are told they are being given time off their sentence, but they must still be supervised. "You're out there on MS. You're not - you're in jail. It's an illusion...sometimes it is even worse than jail."

2. Their perception is that most of the people coming back to prison have not committed a crime but have been returned for what the Parole Board perceives as troublesome behaviour. It is believed that, since Canada has had mandatory supervision, recidivism has increased. Some stated that the present system is not working and our presence, as researchers, was an indication of the failure of current sentencing practice.
3. Prisoners do not have any input into the restrictions put on them. One of the restrictions frequently stipulated is not to associate with other criminals but in prison the only people one sees are inmates "so who are you suppose to associate with out there?". Reintegration is a difficult step for you "can't be expected to fit into society just like that".
4. Some believed that mandatory supervision is used by the police as blackmail in order to get even for what may be considered a light sentence.
5. While in prison, "good time" is lost on an inconsistent and selective basis. "Tickets" are anonymously slipped under the

doors in the evening with no opportunity for the inmate to defend himself.

Disparity in sentencing was another area that attracted extensive comment. The most salient issues are presented below.

1. The difference in terms of socio-economic status was exemplified by the "justice - just us" philosophy. The poor have "no justice or property to protect" but are the ones that receive the punishment.
2. Penalties for white collar crime such as embezzlement, or stock fraud, are less severe even though the actual amount stolen may exceed that of the typical lower class thefts. A remark furnished by a prisoner while he was filling out the questionnaire elucidates this point, "Bribery is only a crime for poor people. For rich people, they don't call it bribery, they call it business".
3. It was thought that family background should not be a consideration in sentencing. Presently, not only are the economically privileged favoured by the bail process, but they are not sent to prison for lengthy periods of time, if at all. (The Elgert case, in which a Vancouver man received two years for killing two French Canadians, was brought up as evidence of this).
4. The system discriminates against native Indians and other minorities who may lack the education necessary to understand the criminal proceedings and are, therefore, vulnerable. It

was mentioned that some alcohol related charges are selectively used against natives.

5. British Columbia was viewed as imposing more severe sentences than the Eastern provinces for it was stated that "only in B.C. would they sentence a blind man to three years for traffic violations". Within British Columbia itself, harsher penalties were more prevalent in less populated areas such as Vancouver Island. The city of Vancouver is home to a variety of crimes which have become quite commonplace, whereas "out in the sticks, it's a big thing".
6. There seems to be a wide discrepancy in sentences for similar crimes (the example of manslaughter and attempted murder was given).
7. Sex offences are dealt with too lightly by the courts. Long sentences for rape, or sexual assault, are rare due to the assumption that these offenders are "ill" and need treatment. To bring this point across it was stated that some child molesters are given community sentences while offenders charged with breaking and entering serve time in jail.
8. The media adds an arbitrary quality to sentencing in that publicity can either increase or decrease the sentence (e.g., victims' statements are often reported). It was expressed that public opinion has no place in justice.
9. Teenagers should be given non-custodial sentences because it is "stupid to put kids that age in jail".

Most prisoners interviewed believed that maximum and minimum sentences should be used to limit the judge's discretion. One option to alleviate the wide discretion and disparity is determinant sentencing. A need for some kind of criteria or guidelines was recognized. However, there was concern that Canada may experience the same problems that some states in the U.S. have encountered (e.g., California). Although everyone wished to curtail inconsistency in sentencing, a few prisoners felt that "each case should be judged on the merits of the individual case".

The prisoners were of the opinion that police overcharge as a matter of form rather than "charging you with what you're suppose to be charged with and that's it". If they cannot convict the accused on one offence then they have additional charges to fall back on. "What is done is that if you look at somebody's chart automatically you look like John Dillinger". In some cases the police charge people for the sole purpose of detaining them in custody since charges can be easily dropped at a later date. It is believed that this practice of "loading you up with charges to hold you" or "get you off the street" will increase with the advent of Expo.

The inmates felt that the effect the police have on sentencing is reflected by the power they wield. This power is revealed by the fact that the police never get charged for any crimes that others would "get cold-blooded murder". One offender,

elaborating on this issue, stated "police always want the death penalty, but for every cop that gets killed there are about 10 that are shot by police". Some offenders went to the extreme by stating that it was "almost a police state". They are under the impression that the police construct crime by building up cases and setting up people. Police officers decide who is brought into the CJS and it is this "inequity which brings the law into disrepute".

The idea of plea-bargaining received mixed reactions ranging from people who wished to see it eliminated to those who thought it greatly benefitted the accused. Some stated that no actual plea bargaining occurred. Instead, justice is destroyed by taking the "judge out of the equation" resulting in the judge "taking it out" on the offender. The inconsistency and bias toward the wealthy which plea negotiations produce were viewed as reasons for its annihilation.

In opposition to the distaste expressed by the aforementioned prisoners, others felt that the process worked well by reducing sentences and charges. As a corollary to this, a couple of older inmates cited examples where guns and hand-grenades were turned over to the police, in exchange for a lighter sentence, or even freedom.

Offenders believe that they are sentenced as a form of punishment and to protect the public (especially from violent

offenders). They felt this justification for sentencing should be clear and not camouflaged behind rehabilitation rhetoric. Furthermore, the notion of deterrence is perceived as an "absolute absurdity" and a "farce".

One individual questioned society's entire value system by suggesting that sentencing philosophy stems from the cultural encouragement to attain material wealth. "You can do anything to a person's family, but don't mess around with their money". In a simplified version of what criminologists have termed "Merton's theory" this prisoner explained that those who are underprivileged must steal the possession that society holds out as desirable.

Prison is seen as a warehouse with few programs or opportunities to be productive and contribute to society. Inmates "should leave with a mental feeling of self-worth". It was suggested that larger hobby shops be constructed that tap the abundant talents within the institutions and render a service to the community (e.g., the handicap program at Matsqui). Programmes where the prisoners own a share of the industry, such as a prisoner owned autobody shop, were favoured. They wanted education programs to be put into effect (e.g., Simon Fraser University Prison Education Program) and made readily available to the general prison population.

Problems they indicated with existing programs are listed below:

1. The success of programs such as Alcoholics Anonymous are dependent on voluntary participation; this is not the case in prison. "It is being a systems player. If they want you to do it, then you do it".
2. The violent offenders program does not address its goal since people who are too violent are not accepted.
3. In their opinion, the Regional Psychiatric Centre Program has never worked and, furthermore, is not facilitated by mixing "stool pigeons" with sexual offenders.

Other concerns that do not fit into our predetermined topics are cited below:

1. Judges should take time spent in jail awaiting trial into account when sentencing. If a person has been remanded in custody then found to be innocent, the government should provide compensation for such things as lost wages.
2. Judges and Parole Boards should be elected so that they can be held accountable for their practices and decisions.
3. The classification of offenders should take into account the types of facilities available near the offender's residence, thereby, facilitating family visits.
4. Previous records should not be a consideration in sentencing.
5. One individual pointed out that although a person from a wealthy family background may receive a lighter sentence, anything he does in prison is not seen as an accomplishment but as something that is expected of a person of that

stature. For example, completing Grade XII or taking university courses is a supposition correctional authorities hold for individuals from that background and is not viewed as an achievement.

6. Half-way houses should be made available on a voluntary basis. Those who have a family may benefit more and the adjustment process may be smoother if they are released to their homes rather than forced into half-way houses. Moveover, it is not possible to turn down a job at a half-way house even though some employers may cheat an offender out of wages.
7. "Any sentence over seven years is crazy" for "long sentences serve no purpose". In fact, it was noted that long-term sentences for drug offences are "killing" people. The psychological effect on those serving a life sentence is that they are "owned lock, stock and barrel". One suggestion was that parole replace this sentencing option, for people change during their incarceration period. In addition, this supervision should provide better integration of long-term inmates into the community.
8. The sentencing process does not end in the courts, but is also carried out in jail, by guards who exhibit their own method of justice.
9. Psychiatric tests may adversely affect a prisoner's sentence, or chances for parole, if misinterpreted by unknowledgable

individuals.

10. Currently, unemployment is high and a prisoner's chances of finding a job are quite slim. Some sort of financial support should be available to reduce the likelihood of the individual returning to a life of crime.
11. A weekend sentence should be used for people on the extreme ends of the age continuum, or for those working. It is "great if the situation warrants it".
12. Canada should look to Norway, Netherlands and other European countries for suggestions on improvements.

Matsqui Lifer's Organization

On July 26, 1985 we attended a meeting with 16 members of the Matsqui Lifer's Organization, a group of men who are serving lengthy terms of imprisonment in medium security. The meeting lasted over one and one half hours during which time we heard their opinions on various aspects of sentencing relevant to the mandate of the Canadian Sentencing Commission. We found the group to be polite and mature. Their perceptions of the sentencing process and the criminal justice system in general were often linked to the political structure as a whole. Although it is difficult to neatly categorize each of their concerns under the specific headings in which the Commission is interested, it is possible to generalize certain themes that are important to these men as a group. We agreed to attend the meeting on their invitation because we think this group has a special interest in sentencing reform. Some of their concerns include the following:

1. There is no remission for those serving life sentences. Many felt this to be unfair; any positive progress that these men make during the course of their incarceration is not officially recognized by the government. Some members of the group were openly frustrated by this selective exclusion from the remission clauses.

2. At least three of the lifers recalled times when they were-visited by police, while in prison, and were asked for information about their aquaintances or about ongoing investigations. The police threatened to make reports to the Parole Board if they were not cooperative. (The inmates speaking were those who were serving long sentences, but were still eligible for parole.) This was cited as unfair.
3. Most felt that there should be maximum sentences in law for Criminal Code offences. There was less agreement to minimum sentences because it was felt that the judge needed to take everything into consideration before making a sentencing decision. Mandatory minimum sentences would not allow the exercise of this discretion. The seven year minimum sentence for some narcotics offences was viewed to be unrealistic and "out of touch" with societal values today. The only crimes that were viewed to be serious enough to warrant mandatory minimum sentences were sexual offences.
4. Judges are often prey to public pressure to increase sentences for particular types of crime. The public is often informed about the nature and extent of crime from American television. One or two inmates thought that judges should be more impartial and objective rather than allowing the public to (erroneously) target specific groups, or crimes, as worthy of increased sanctions.
5. Some of the older prisoners, many who had served sentences in the B.C. Penitentiary, thought that there was an increasing

severity in the length of sentences being given out by judges. One commented that five years used to be considered a long time but now, that sentence length was considered relatively short.

6. One prisoner, with others concurring, felt that the appellate courts were not active and decisive enough when it came to setting trends and precedents in sentencing. Appealing a lengthy sentence was described as "futile" because the appellate court seldom reverses lower court decisions or reduces prison sentences.
7. It was mentioned that judges are restricted in their sentencing options and that greater advantage should be taken of non-custodial alternatives.
8. Some sentences were identified as totally unreasonable: the 15 and 25 year minimum sentences for second and first degree murder denied the potential of human change and development. Men began to deteriorate after having reached a "saturation point" in confinement.
9. The punishment for the crime committed was, specifically in regard to lengthy imprisonment, not delivered until the offender was released. The handicap that imprisonment created was at no time more obvious than when an offender was released. As one inmate stated, "the effect of time doesn't come until you release them because it's [prison] home for them - that's when the punishment starts".

10. The minimum time that had to be served before an inmate was eligible for an unescorted temporary absence was thought to be unreasonable. This arbitrary minimum sentence for unescorted temporary absence eligibility was not based on an assessment of the offender's perceived dangerousness, or lack of it, but on legislated criteria.
11. The inability to maintain and develop outside contacts was cited by several inmates as an impediment to personal development.
12. There were strong sentiments reflected by virtually everyone in the group concerning the National Parole Board. They felt that the Board was too conservative, too politically dependant and improperly trained for their role. It was felt that one Board member could not be objective in her decisions because her son was shot in a hold-up at a large department store several years ago (the validity of this perception is not known; however, it seemed to be a salient factor in their perceptions of how the Board operates).
13. The secrecy of the parole decision-making process was a source of concern for some of the inmates. Many felt that they were not privy to the information that the Board used in making decisions.
14. Recent litigation launched by prisoners to make the parole decision-making process more accountable and fair was not viewed to be particularly effective. One inmate commented

that the Board "just rewrites the rules" whenever a federal court decision required further "due process" be incorporated into Board decision-making.

15. Many felt that the Board should operate like a public trial, with open hearings into applications for early release. The Board, under this plan, would be required to furnish all details informing their decision-making.
16. It was also suggested that the Board be subject to a "reverse onus" clause to prove that an inmate was ineligible for conditional release because of dangerousness or likelihood to recidivate.
17. Many inmates (and parolees) are under the impression that the Board considers drug offences to be a "violent" crime whereas the Supreme Court has referred to drug offences as "victimless crimes". The disparity in perceptions indicates to them that the Board is rejecting parole applications on the basis of an archaic and inaccurate stereotype.

We asked them if there were any types of offences that they felt were subject to greater disparity in sentencing than others. We also queried the perceived rationale for this disparity and if they had any suggestions for improvement. They made the following comments:

1. Drug offenders received the most widely variant sentences. This was frequently shaped by the geographical location of the offence.

2. The status of the victim shaped the outcome of the sentencing decision.
3. The mood of the public and the amount of media coverage often put pressure on the court to inflate a sentence.
4. The socio-economic status of the offender was perceived to be crucial in the court's decision to impose short or long terms of incarceration. One inmate produced newspaper clippings of people who had committed very serious crimes: one a double murder of two French Canadian vagrants who allegedly sold drugs to the daughter of the murderer. He received a two year sentence. The other involved a businessman who murdered his partner because the partner had stolen his life savings; he received a one-year term. These were cited as examples of disparate sentencing; that the intrinsic nature of killing had less to do with the disposition of the court than public attitudes towards undesirable types.
5. The issue was raised that the government may be creating its own nightmare of correctional management by continuing to sentence men and women to 15 and 25 year prison terms. Some men feel they have "nothing to lose" in escape plans and hostage-taking incidents; the triple murder and double suicide at Archambault was cited as evidence of this perception.
6. Judges were seen to take the possibility of parole and mandatory supervision into account when they determined

length of prison sentences, however some did not consider that an offender may not be eligible for conditional releases (e.g., mandatory supervision is not applicable to murderers).

7. Many believed that a sentence which included restitution to society or the victim was a sound alternative to strictly punitive-oriented sentences.
8. A point was raised that police officers were often afforded special treatment by law, whether they were the victims of crime or involved in homicides in the course of their duty.
9. Some viewed the correctional enterprise as a bureaucracy that provided employment and careers for thousands of Canadians, that the government had a "vested interest" in building prisons.
10. Several inmates thought that Canadian decision-makers should look to Sweden and Norway for examples of sentencing reform, rather than depend upon the American experience for future policy.

We asked the group what kept them, in light of their long terms, from actively rebelling or trying to escape. We were told that they were generally perceived to be "good risks" and had been transferred from other prisons to help stabilize the Matsqui prison environment. There seemed to be some agreement that certain prison programs, such as visiting privileges in modular housing units on the prison complex, were extremely valuable and transfer to a higher level of security would jeoprodize this

benefit. Others openly admitted that it was the presence of armed guards that made rebellion or escape not an alternative.

We should include some other comments that we thought were important for the Commission to note:

1. While there was some general agreement that life sentences were a rational response to some types of offenders, rather than some types of offences, most prisoners expressed frustration and anger at what they perceived to be "political trade-offs" at their expense. Instituting the 15 and 25 year sentences in exchange for the abolition of the death penalty was a retrogressive step. In fact, many expressed an opinion to see the death penalty reinstated.
2. Incarceration has a saturation point. There is a point in time (some said five years, some said 10) where further incarceration serves no useful purpose for society, the victim, or the offender. Any further imprisonment is debilitating and counter-productive to whatever was believed to be accomplished in confinement.
3. The legitimacy of the whole government is called into question when it allows men serving long sentences to deteriorate in prison. Many perceived themselves (especially those convicted of major drug offences) to symbolize society's aversion to particular behaviours. Some cited examples of similar behaviour made by the government, or its agents, that were tantamount to the crimes of which they were

convicted.

We realize that the group we spoke with was unrepresentative of offenders in general. However, we have included their perceptions because they are, we believe, a genuine set of opinions and concerns by a group of men who have received the most severe sentence available to the court.

Kent Institution

The selection process at Kent, a maximum security federal prison located in Agassiz, was undertaken by our contact person in the institution. Initially, it was arranged for us to interview 25 randomly selected (based on Federal Peniteniary Service Numbers) inmates on August 2 and 6, but only 16 prisoners from the general population and five from the protective custody unit turned up at the scheduled times. In total, 20 questionnaires were completed and the same number participated in the discussions following.

Protective Custody Unit

When we arrived at Kent, the men in the protective custody unit were "locked down" due to a stabbing incident in the general population which occurred the day before. These circumstances may have affected the type of information we received, although the situation was only brought up in relation to problems specific to the protective custody unit.

One person from the group interviewed later expressed his views in a lengthy letter. His opinions did not differ in any substantial way from those offered by the remaining prisoners. In fact, he writes:

> During the session, I found most the the comments offered, to be similar to those expsressed through the years by people in prisons, and I think you will come to see the attention towards paroles and espeacially mandatory supervision frequently exspressed to you. This was a main reason I sat back and earred the comments, because I, had no different views than that of the other men [sic]. . . .

The most prominent issues raised by these prisoners are as follows:

1. Harsher sentences are perceived to be given to repeat offenders for two reasons:
   a. the court tends to judge the offender's prior record rather than the current incident; and
   b. the offender might appear before the same judge on more than one occasion.

   A related aspect to this is the notoriety gained through contact with the CJS. "When you get out the battle is just beginning. The RCMP will find me guilty of anything. It doesn't matter if I stay clean."
2. Economically impoverished people who rely on legal aid representation, or who do not come from a good family background, are viewed as receiving longer sentences. In support of this perspective one inmate wrote:

   > . . .alot of the cases in B.C. are funded by a legal aid society lawyers who, are sometimes ill motivated towards any particular case and poorly represent their clients and, then do not support a appeal afterwards or push for funding by the appeals committee. I have seen so many cases suffer because of the above factors, and men, who are forced into doing their own appeals, only to see it become a futile effort [sic].

3. Native Indians are discriminated against by the courts. An example was cited of a Saskatchewan case where a white offender received seven years for manslaughter and his native accomplice was handed a 25 year life sentence for murder. This ruling was later changed on appeal to second degree murder and 10 years imprisonment. The prisoner indicated that this change was an effort to bridge the disparity.
4. The opinion was expressed that white collar crimes such as embezzlement are treated quite leniently. After a brief discussion it was decided that this is sensible, since no violence or harm is involved.
5. The indefinite sentence imposed on a 'dangerous offender' cannot be justified. "No matter what the crime you should have a sentence" otherwise the situation gives the person nothing to live for.
6. They indicated that there should be restrictions on judges in the form of maximum sentences. In addition, a person's past history and juvenile record should not be introduced in court.
7. The prisoners recommended that mandatory supervision be replaced with earned remission. Mandatory supervision was regarded as a "revolving door" where only suspicion of a crime is needed to return a person to prison. If offenders receive another charge while on mandatory supervision then "you get that plus mandatory supervision time". The power

held by the authority in this area was seen as being greater than that of the courts.

8. They expressed the opinion that parole is "bogus" and granted in an inconsistent fashion. The Parole Board members are influenced by what the police and judge have said about the offender rather than emphasizing the progress an offender has made in jail. Their decision is too subjective for they "don't know how you feel or will act".

9. One of the stipulations often included in mandatory supervision and parole is that the offender cannot associate with known criminals. But "how do you know if a guy is a criminal". Moreover, they felt that they should be given the opportunity to make their own decisions regarding such personal matters. They indicated a need for more assistance upon release with regard to employment and finances. "You don't know other alternatives, so you go back to what you know" - which is crime.

10. Plea-bargaining is seen as "unfair" and unreliable. One prisoner said that an offender could plead guilty for one year but receive three years instead. If they appealed their sentence, they indicated that 95% of the time the penalty is increased. Lawyers "trade you off" meaning that concessions are made on one client to the benefit of another (usually wealthier) client. There is a strong preference for guidelines because lawyers "should have to live up to their

word" and ensure that judges accept the deal.

11. Most young offenders have a problem, but after a certain age (around 16) the system no longer attempts to help them.
12. Prisoners should be able to deal with their problems in confidence and off the record. Presently, at the Regional Psychiatric Centre any discussions held with the psychiatrist may be brought up in court and have an effect on the sentence. Furthermore, the decision regarding the time of release from programs should be left to the offender, for some people require more assistance than others. It is natural for an offender to be angry and violent when he first enters the system and the psychiatrist should be cognizant of this.
13. Drug or alcohol programs in the institutions "are a joke because you're not facing that in jail". These programs are valuable only to offenders that are in the community with easy access to such items.
14. They felt that a long sentence makes a person "more bitter and worse than when he came in". Prison cuts offenders off from the world and their families. They "expect you to get out and not feel bitterness because they've taken everything".
15. The offenders recommended that separate units or jails house people who commit similar crimes to reduce the dissemination of crime techniques. To minimize violence it was also

suggested that the length of sentence be similar.

16. In relation to protective custody itself, a few problems were expressed:
    a. there are no programs;
    b. they do not get the same benefits as the general population but receive the same punishments; and
    c. facilities should be available as close to the offender's home as possible. That is, every province should have a facility for protective custody offenders.

General Population

On the topic of parole and mandatory supervision the following points were made:

1. The power the Parole Board has is illustrated by the comment, "It doesn't matter what the judge gives you, the Parole Board makes the length". Recommendations made by judges "don't hold any water" in the institutions. The Parole Board and the institution make all the decisions for the "Parole Act and the Penitentiary Act supercede the Criminal Code".
2. In the decision regarding early release it was felt that too much weight is given to inmate attitudes toward parole officers or staff. "Attitudes aren't conducive to rehabilitation, but what's an attitude". A prisoner's behaviour within the prison is not indicative of his

performance on the outside. Similarly, less weight should be placed upon reports written by living-unit officers unless the offences committed while in jail are covered in the Criminal Code.

3. Discrimination exists in the parole process since native Indians, Chinese, Blacks and sometimes non-Christians are not granted parole on the same basis. To compensate for this, it was suggested that the Parole Board include minority members.
4. The restriction placed on prisoners who are on parole, or mandatory supervision, are too stringent. They may be returned to prison on the statement of a police officer - no evidence is required, just suspicion. If parole is revoked, an offender's "good time" is taken away and he is automatically sent to maximum security even if he is acquitted on the charge. This person must then begin the long process (four to six months) of reapplying for parole.
5. Discontent was expressed at the lack of consistency which occurs when different members are on the Parole Board at different stages in the decision process. In addition, the Board members should have practical experience in relation to what is occurring in prisons and the possibilities which exist.
6. It was felt that parole is "something that has to exist", especially for those serving long sentences, but mandatory supervision should be abolished. In its place they wanted

earned remission. It was stated that mandatory supervision was a concept borrowed from California, which has since been abolished in that state.

The discussion presented below focuses on the issue of guidelines:

1. One group felt that restrictions on sentencing options should be placed on minor crimes only. The second group indicated that the only minimum sentence should be on sex offenders, otherwise all current minimums should be abolished including the 25 year life sentence for first degree murder. Maximums were useful, however, in curbing inequality. They believed that judicial discretion is still necessary to accommodate varying circumstances.
2. "Life sentences shouldn't even exist" because there is "no light at the end of the tunnel". They firmly believed there should be no minimum 25 year sentences. "Heavy sentences don't make you stop, just more aggravated". Long term prisoners lack the life skills and communication skills necessary to function when released. As one lifer stated, "I'm not going to know nothing for job trades". Instead of being on parole for life, it was proposed that those that have done well on parole be discharged. Another suggestion was that early parole be mandatory for lifers to see if they can function in society. Release after 15 years is still perceived as better than 25 years because the offender at least has time to do something with his life.

3. The comment was made that people generally start to deteriorate after the first three years of imprisonment. "I'm now a threat to society, but they have to let me out". People may be prepared to go out after a few years, but over long periods of time they lose their ability to function normally.

As for the purposes and principles of sentencing they felt that the idea of rehabilitation was politically important, but that it did not exist within the prison milieu. The institution provides few opportunities for offenders to learn new work skills that can be transferred to the community. It was suggested that the institution provide accredited government apprentiship programs or certificate courses which verify the knowledge and experience gained. In addition to this, they wanted more school programs that had a practical orientation rather than courses in humanities.

Various factors were suggested that affect the length of the sentences given.

1. Individual differences in judges result in different sentences for similar crimes.
2. More lenient sentences are given to people from an influencial or wealthy family background. As well, poorer people are dependent on "legal aid, so there's only a one percent chance of getting a deal", review, or appeal. These lawyers will not exert as much effort as they would if the

offender were paying them. Also, lenient sentences that are the result of plea negotiations produce disparity.

3. Native Indians and other ethnic groups receive harsher sentences and experience greater difficulty because of cultural differences and the complexity of Canadian legal proceedings.

Other items mentioned include:

1. Prison reports are condensed and frequently do not include the circumstances of the offence which may contain mitigating factors. Prisoners also expressed a need for more indepth explanations about the reasoning behind certain decisions.
2. The classification system needs to be improved. Some individuals are never 'cascaded' before release and others are placed in inappropriate security levels due to overcrowding. This may result in a negative impact on the individual for parole is usually denied if the person is in maximum security. Examples were cited of youths between 15-17 years of age who were held in a maximum security facility.
3. In some instances the accused is forced to prove his innocence which is contrary to the belief of 'innocent until proven guilty'. Examples of such occurrences are, possession for the purpose of trafficking and the provisions under the Dangerous Offenders Act.
4. First offenders should not be put in prison.
5. There should be compensation for time spent in remand

especially if the accused is found innocent.

6. Prison psychiatrists are viewed as paid informants. Since their reports are influential in parole decisions, as well as other future plans the offender may have, it was felt that a person should be able to choose psychiatrists from the street. Their assessments should be more extensive to ensure a greater level of confidence in their decisions.
7. Police overcharge because they "want to keep you in jail as long as they can". If an offender manages to beat most of the charges a heavier sentence is given to compensate for this.

Robson Street Community Correctional Centre

The Robson Street Community Correctional Centre is a residence for day parolees serving federal sentences. We spoke with six residents on July 25, 1985 for about 90 minutes during which time they also filled out a questionnaire. This number represented about one third of the count in the Centre at that particular time.

Many of the issues raised by this group concerned mandatory supervision and parole. Some of the comments include:

1. Mandatory supervision is not fair in the sense that prisoners are offered a reduction in their original sentence for good institutional behaviour but that "reduction" includes all the behavioural restrictions inherent with full parole.
2. Reporting conditions were a source of stress for many parolees because they felt they were stigmatized by the label and treated differently by police due to that label.
3. The conditions of parole and mandatory supervision were too ambiguous, the parole supervisor could interpret and apply the rules in any fashion he/she so desired. The reasons for revocation were not always that clear. In fact, one parolee stated that being on parole "was like going before a judge all over again".
4. All of the group we spoke with agreed in principle to the

idea of a conditional release before the expiration of the sentence, but did not like the arbitrary nature of parole revocation decisions.

5. Mandatory supervision was identified as only useful for certain types of offenders and should not be applied to every federal prisoner. This program was not beneficial for those inmates who were not likely to be dangerous once released. Many felt that mandatory supervision should be used sparingly and not as a blanket policy for all inmates.
6. The rapport that a parolee has with his parole supervisor was cited as the most crucial determinant of success or failure on mandatory supervision or parole.
7. Post-sentence programs should include treatment for sexual and violent offenders (it was not asked if this should be mandatory).
8. Prison transfers often reduce a person's eligibility for parole because he has no outside support networks to secure stable employment or otherwise meet the Parole Board's criteria for early release.
9. Parole decisions were only made in instances where "they looked good on paper", where the prisoner was about to be released anyway. The Board was unwilling to put itself in a position where they might be seen as taking a risk.
10. Federal prisoners are becoming disillusioned with the Parole Board and many are not applying for a conditional release because they think it is only an exercise in futility.

11. Support staff, such as classification officers, were in too short supply to handle all the paperwork involved with applying for conditional releases; long delays were to be expected.

We asked the group what they thought was the rationale for sentencing, whether the sentence included time in prison or community based sentences. Some of their responses are listed below:

1. The sentencing purpose is predominantly punishment.
2. Rehabilitation is an individual decision on the part of the offender and correctional authorities are "wasting their time" trying to get people involved in rehabilitation programs.
3. Judges seem to erroneously assume that rehabilitation is a given fact of incarceration and that certain programs are available to offenders. The group we spoke with thought the judiciary was naive about the true conditions of imprisonment.
4. The longer the sentence, the greater the deterioration of the prisoner. One parolee stated, "The only thing you learn in prison is how to be patient".
5. There was unanimous agreement that opportunities and programs to enhance job skills or educational advancement should be a continuing adjunct to imprisonment.

We asked about the perception of unequal sentencing practices, why they thought that disparity existed and what they thought might alleviate those conditions. Comments were:

1. All the parolees (some of them had been in prison for over ten years) felt there was sometimes a wide discrepancy in sentencing practices for offenders with similar backgrounds and similar offences.
2. The group we spoke with was divided on what they thought was the best approach to curb sentence disparity. One suggested a tariff table that would apply to everybody for specific offences. Others rejected this idea, stating that the individual discretion that judges have is an integral part of the criminal justice system; abuses of this discretion were few but created widespread feelings of unfairness among prisoners.
3. A suggestion was made that only maximum penalties should be instituted in law, providing a ceiling for judicial power.
4. Some parolees said that they were informed before they were formally sentenced what the disposition of the court would be in their case. This seemed to leave them with the impression that sentencing was more a function of pre-trial bargaining than an impartial decision by the court. Usually their lawyers told them what to expect, based more on the geographical location of the court and personality of the sentencing judge rather than the intrinsic nature of the offence.

5. If there was to be a tariff table for offences, one parolee suggested that this table be revised every two or three years by the legislature to respond to changing community perceptions of the seriousness of offences.
6. Unfairness in the sentencing process seemed, according to some, to be linked to a person's socio-economic status, although not everyone agreed. Examples such as the light sentences given to millionaire J. Bob Carter for his sexual involvement with two underage females were cited.
7. Political or other powerful ties in the community seemed to be a mitigating factor in sentencing.
8. A person's demeanor and presentation of self in front of the sentencing judge was also cited as an important determinant of sentence length. This was felt to be unfair because some offenders had come from deprived backgrounds and were not as able to "talk their way out" of a stiff sentence.

When asked if there were specific crimes for which there seemed to be a greater deal of disparity in sentencing, sexual offences and narcotics offences were immediately identified. However, some parolees felt that middle class offenders with "respectable" backgrounds might be given harsher sentences for the above mentioned crimes because they had either violated a position of trust or had risen to their socio-economic position through the proceeds of criminal activity.

Suggestions for change included a mandatory retirement age for judges at 50 years (some felt that the nature of the judicial task was such that one could not help but become jaded over the years).

At least two members of the group we interviewed thought that the judiciary should be made up of two to three judges to "balance" personalities and hopefully reduce disparity due to this type of bias.

Howard House

Howard House is a "half-way house" for offenders released on parole or, occasionally, mandatory supervision. We initially made arrangements with the parolees at Howard House to survey their opinions in regard to sentencing one week prior to administering the questionnaire. We were given verbal assurances by the group that they were collectively interested in the goals of the study. Furthermore, they invited us to join them for supper just prior to filling out the questionnaire which we hoped would be an opportunity to "break the ice" and develop some rapport with the parolees.

When we actually attended Howard House to begin the study, we found that there was less enthusiasm for participation than had originally been indicated. Of the eight residents who were there, only four filled out questionnaires and only two remained through the duration of the study. There were several distractions and some parolees had to occasionally leave. Our "group" interview actually consisted of the impressions, opinions and values of one outspoken parolee. He seemed to articulate many values to which the others concurred. However, when we later looked at the questionnaire responses made by the group as a whole, there were several very conservative reactions to sentencing policy that were not made verbally. As in our

experience with the prisoners at the Lower Mainland Regional Correctional Centre (both the Main Jail and Westgate B), it seemed reasonable to us that we may have been able to enhance the quality of the information we were attempting to gather, free from the biases and peer pressure generated by group discussions, if we had employed a methodology sensitive to these influences. Individual interviews would probably have increased our rate of response.

For these reasons it seems futile to record the opinions of one parolee and try to generalize his perceptions to that of the group. We believe that his opinions were not necessarily those of the others, and this was confirmed by the type of answers we received on the more private mode of questionnaire response.

North Shore St. Leonard's Society

The North Shore St. Leonard's Society is a federally funded non-profit society for offenders released on day parole or mandatory supervision. The home has a maximum capacity of seven placements; we interviewed three of these men for the Canadian Sentencing Commission. Some of the more salient concerns they expressed are listed below:

1. Mandatory supervision was not necessary for all offenders. The need for the post-release program should be assessed individually and not be a universal condition for offenders.
2. This group was unanimous in their belief that mandatory supervision did not deter offenders from committing further offences.
3. Remission is something that should be earned and not have the constraints inherent with supervision. They felt that the old system of earned and statutory remission was more fair than the present system.
4. Despite the limitations on freedom with parole, the program was assessed as being more favourable than imprisonment.
5. Some expressed the opinion that parole was only another bureaucracy to supplement the police function, and, as such, was unnecessary. The police "know more than the parole officer, so why do we need them?" was one reaction.

We asked this group how they felt about disparity in sentencing.

1. Sexual offenders were identified as one group that received lighter sentences than the gravity of their crime required. A few examples were offered (cited from the media) where sex offenders received intermittent sentences or probation.
2. Sentencing in western Canada was viewed as more severe for certain crimes such as drug offences. In eastern Canada, sentences for armed robbery were seen as receiving harsher penalties.
3. Socio-economic disparity was summed up in the phrase, "money talks". Rich people were seen as more often getting probation or community service hours if convicted of a crime. Other examples were noted where affluent offenders had not been spared a severe sentence.
4. If a magistrate or judge recognized an offender from a previous court hearing, they believed that the offender's chance of receiving a fair sentence was diminished.
5. Prosecutors had greater power to "judge shop" than did the counsel for the defendant. Only the most affluent offenders could afford a lawyer who is able take the court's time to select a particular judge thought to be sympathetic to the offender's charge(s).

On the subject of the purposes and principles of sentencing, we recorded the following responses:

1. The overwhelming view was that sentencing was for punishment. Several opinions were voiced that advocated the use of imprisonment for public protection.
2. Opportunities for self-improvement within the prison system were few and far between. Furthermore, people that might benefit from rehabilitative programs (younger offenders) were frequently too rebellious to take advantage of what was offered. Some of the attitudes that prison staff had towards rehabilitative programs were cited as being a liability to their realization. Those prisoners with special skills were not allowed to reach their maximum potential, especially if those skills earned them some monetary reimbursement.

We concluded by asking them what changes they would like to see to the present system of sentencing. Their comments include:

1. Separate facilities were advocated for younger offenders. The perception of prisons as "universities for crime" is not entirely inaccurate.
2. A review of lengthy sentences after a specified period of time. Life sentences deny the potential for human change and development and only increase bitterness toward the system.
3. Prisoners should be allowed more liberal access to their families. Conjugal time is one of the few "carrots" left in the prison system and this should be expanded.

Balaclava House

Balaclava House is operated by the Elizabeth Fry Society and situated in Kitsilano, an attractive housing area in Vancouver. The maximum population of this resource is 12 women; we spoke with five of them on August 6, 1985. (There were four women in the group and one transsexual.)

After the women had completed the questionnaire, we directed the discussion around certain issues related to their concerns with sentencing. The following issues were raised:

1. There were limited federal facilities for women to serve their sentences in the Pacific Region. Transferring a woman to Kingston often severed her ties with the community and family. Limited space was available in the Lakeside Correctional Centre and this was usually reserved for those who were considered to be good security risks. They were of the opinion that a federal facility for women should be built in British Columbia.
2. The rationale in sentencing which claimed to "protect the public" could only be justified in cases of violent offences or where there was serious harm done to the victim.
3. General deterrence was viewed as a plausible rationale for incarceration. The group was unanimous in their claim that incarceration often protected the female offender; that some

women were far worse off on the street. Many women whom they had seen in prison "did not belong there", but a lack of alternative facilities forced their confinement. Some women were so "institutionalized" that they wanted to return to prison. (Two women said, in effect, "Yeah, that thought has been on my mind a lot these last few days...")

4. If the courts and the government were sincere in wanting to protect the public, they would be doing more to curb violent pornography and protect children from exploitation. Two women cited some activities of corporations that were dangerous to public health; "protecting the public" seemed to be a more appropriate rationale for legal intervention in such examples.
5. Paying restitution to the victim was viewed to be a logical reason for imposing a sentence on an offender. This was difficult to do if one was in prison. In the case of serious crimes, the victim may not be compensated by the sentence of the court, but the family of the victim may receive some compensation in knowing that the offender is being punished.
6. There was a general consensus in the group that the punishment for a behaviour must be made more fitting to the crime. Imprisonment was simply "warehousing" the offender for a certain length of time after which they would return to society in worse shape than they had been originally.
7. If a person received an unusually short sentence, he or she

might have problems in prison because rumours would spread that they had "ratted" on their co-accused or made a deal with the police.

8. Sentences for sexual offences were deemed to be excessively lenient; crimes which they felt were less serious, such as narcotic convictions, received unduly harsh sentences.
9. Geographical location was cited as one of the main determinants of sentence severity. Many felt that this was unfair and that all laws should be applied equally wherever the crime occurs.
10. All of the women agreed that sex was a mitigating factor in sentencing with men getting heavier sentences for the same crimes. If a woman's co-accused were men, especially older men, women usually received a lighter sentence even though their involvement may have been equal.
11. Sexual offences carry with them the defence that the offender is "sick" or "maladjusted" which mitigates the severity of the sentence. Several women thought that this was unfair because the same defence was not extended to other crimes.
12. Appeal times take too long. Some have gone on for two years, greatly increasing the anxiety of the offender.
13. Parole and mandatory supervision are the only "carrots" available in the institution for good behaviour. These conditional releases were viewed as "keeping the lid on" prisons and necessary to keep things relatively peaceful.

Maximum sentences which did not provide for parole or mandatory supervision were creating tensions in federal prisons.

14. Plea-bargaining was perceived as being good "if you're caught cold turkey" in the commission of an offence. Who represented the accused also affected sentencing outcome. If a person has the money to afford a good lawyer, they could expect to be found not guilty of the charge or receive a light sentence. As one woman stated, "You've got to find a lawyer who has a good working relationship with the Prosecutor".
Plea-bargaining was also cited as a way of helping to reduce the backlog of cases going to court.

John Howard Society - Sexual Offender Program

We decided to interview sex offenders for the Canadian Sentencing Commission for the following reasons:

1. It became apparent to us from interviewing other offender groups that sex offenders received the brunt of social condemnation and ill treatment from inmates. Inmates generally perceived them to be the worst of all offenders and that sentencing practices were not severe enough for the gravity of their crime(s).
2. A great deal of media attention is directed towards this particular sub-group. Concern is expressed that sex crimes are particularly heinous, on the increase, and that sentencing practices fail to rehabilitate or deter people from committing these crimes. The Parole Board and the program of mandatory supervision are frequently slammed as being too lenient, ineffective and unresponsive to concerned interest groups.
3. We were curious as to how these men perceived the sentencing process.

Although it may have been possible to interview sex offenders in institutional confines, we decided to approach them in a unique setting.

In the Pacific Region, all sex offenders released on mandatory supervision must attend counselling sessions as a condition of their freedom. The John Howard Society is used as a forum for their discussions three evenings a week. The Monday night group are those offenders whose victims were under the age of 16. The Tuesday night group is for offenders whose victims are over 16. The Wednesday night group consists of offenders who have recently been released and have not been assigned to either of the other two groups.

We were allowed to attend these meetings for the last few minutes of their regular session, whereupon, we introduced ourselves as researchers for the Commission, described the objectives of the study and asked if anyone was interested in filling out a questionnaire and participating in a discussion around sentencing issues. Ten offenders from these groups filled out the questionnaire and 13 participated in the open discussion.

The comments listed below reflect some of the concerns these men had about sentencing practice:

1. One of the first points raised was why the Parole Board had the power to require offenders to participate in a compulsory treatment program while judges did not have the same power, or if they did, seldom exercised it. Many complained that compulsory participation in group counselling was a feature particular only to the Lower Mainland of British Columbia.

2. Some felt that the idea of compulsory treatment only for sex offenders was curiously discriminatory. Their rationale for this was that the same motivating force that compelled armed robbers to kill someone during a holdup (greed or selfishness) was, simply speaking, the same motivation that led them to assault their victims sexually. Why were they selected out to be involved in treatment if all offenders were inherently deviant (selfishness)?
3. Many offenders involved in these groups, especially the ones who left us with a few parting comments before they withdrew from participating in the survey, were openly hostile about compulsory treatment. In fact, one stated that if he had to participate weekly in these groups for the balance of his sentence (five years), he would sooner go back to prison. We heard several comments to the effect that group counselling was "all bullshit" to create jobs for professionals such as psychiatrists, psychologists and criminologists.
4. There was a consensus among virtually everybody from these groups that the purpose of sentencing was to punish the offender and protect society. There was less agreement for the principle of general deterrence, some felt there was no way to prevent sexual deviance through punishing others. Conversely, some offenders said the threat of imprisonment was the only thing that kept "normal men" from committing sex crimes.

5. When we directed the discussion to the topic of sentencing-disparity, most men in the groups we spoke to believed that there was a vast range of sentences given to sexual offenders. If a sexual offence was committed by a person with wealth or political contacts, or a person deemed to be a "pillar of the community" prior to their arrest, they were given lighter sentences. As one person commented, "I got 10 years, the other guy got 30 days and yet another a suspended sentence - all for the same crime".

6. The primary source of sentencing inequality, according to the majority of the members in these groups, was due to individual characteristics, biases and values held by the sentencing judge. Many felt that some judges were overly harsh when sentencing sex offenders. Some participants also felt that judges should be subject to mandatory retirement at age 50 and should receive specialized training for their role. The general awareness was that sentencing practice is a subjective practice left to the judge based on his/her values concerning sexual behaviour.

   Sentence severity was augmented by the media coverage given to sex offenders, their victims and recent unsolved sex crimes in the Lower Mainland. One offender stated that "Clifford Olson put sex offenders behind bars for at least another two years."

7. We asked the members of the three separate groups what they thought could be done to curtail sentencing disparity. Most

felt that mandatory minimum sentences or tariff sentencing would alleviate the cases where offenders from higher socio-economic backgrounds received relatively light dispositions. Others firmly held that individual judicial discretion was an essential element in sentencing fairness.

8. Members of at least one group of sexual offenders we spoke with were concerned that there were no voluntary post-sentence programs for sexual offenders. One man said, "Yeah, I don't like coming here every week but where else am I going to go to talk to someone? Nobody out there is going to talk to a sex offender".

   There was diverse evaluation of the treatment program offered at the Regional Psychiatric Centre for violent/sexual offenders. For some, it was a waste of time, others said it helped them to deal with their sexual problems.

9. Few members of any of the groups we spoke to had anything positive to say about the Parole Board. One man looked around the room and noted that everyone there, with one exception, was on mandatory supervision. Most sex offenders believed that their chances for early release through parole was improbable, given the gender of all of the Board members in the Pacific Region and their (perceived) attitudes towards sex crimes.

   Mandatory supervision was regarded negatively by most of the sex offenders we encountered. Most felt that earned remission

should not be subject to community supervision and that what few incentives remained for prisoners to "be a squarejohn" were gradually being eroded away. Many were of the opinion that with an increasing population of offenders serving 15 and 25 years before parole eligibility, there needed to be some internal "carrots" offered to inmates to maintain stability.

10. One inmate described how he found himself in a "Catch-22" situation where the Parole Board was refusing his application for early release because he had not received treatment. His only way of receiving treatment was to attend a violent offender program at the Regional Psychiatric Centre in Matsqui. Unfortunately for him, the program had only limited numbers of vacancies and he had been unable to join this therapeutic group before his first hearing before the Board. His only option at that point was to apply for temporary unescorted passes so he could undergo treatment privately and at his expense. Some offenders also saw their applications for early release denied because they refused to attend the Regional Psychiatric Centre's violent offenders program. There were other concerns expressed about the Parole Board as well. Most of the individuals we spoke to felt that the Board based their decisions to refuse early release on the basis of their own prejudices and values, rather than the offender's progress and living-unit personnel assessments of their risk

to society. They felt the Board was less than impartial and selective in the information they chose to consider in an application. There was concern expressed that many sincere and motivated inmates were denied parole because they were convicted of sex crimes while a "revolving door syndrome" characterized the careers of several manipulative property offenders.

11. Our attention was drawn to what many offenders considered to be a fault of the judiciary in understanding the prospects for early release in the case of sex offenders. They thought that judges gave heavy sentences to sex offenders on the assumption that these people would be eligible for parole after serving two-thirds of their sentence. In their opinion, judges should be aware that even good institutional behaviour and participation in therapy did not assure a sex offender's possibility for release through parole.

In conclusion, we must add that we gained a different perspective by speaking to this special group of offenders who, as mentioned before, have been scapegoated and castigated not only by society but other offenders as well. It may seem that we only heard comments from those who are embittered by the sentencing process. However, these were the men that chose to take their own time to talk with us about their concerns. One might speculate that the offenders who refused to stay and contribute to the discussion were also embittered by the sentencing process and saw little hope for change.